

ESSAY

THE SPIRIT OF OLIGARCHY IN AMERICAN AGRICULTURE

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Black farm ownership has declined by more than 90% since the 1920s, making it one of the starkest yet least examined examples of racial injustice in American history. This Essay argues that these losses are not the product of isolated discriminatory acts, but the consequence of a durable agricultural oligarchy: a system of concentrated economic, political, and cultural power that has structured American agriculture since the antebellum era. By tracing this oligarchic order across slavery, Reconstruction, Jim Crow, and modern agribusiness, the Essay situates the struggles of Black farmers within the constitutional and political economy dimensions of American governance.

In so doing, this Essay makes three contributions to legal scholarship. First, it reframes the exploitation, land expropriation, and erasure of Black farmers as constitutional failures to guarantee republican government by permitting oligarchic control of land, credit, and markets. Second, it links the Pigford v. Glickman settlements to recent federal initiatives, including the American Rescue Plan Act and the Inflation Reduction Act, revealing persistent resistance to redistributive agricultural reform. Third, it critiques Wynn v. Vilsack and related cases, showing how colorblind constitutionalism entrenches oligarchic power and impedes remedies for systemic inequities.

Building on the USDA Equity Commission's 2024 recommendations, the Essay advances a structural framework for combining race-conscious and class-based reforms that address historical injustice while navigating constitutional limits. By situating agricultural discrimination within the broader problem of oligarchic power, the Essay highlights

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the stakes of agricultural equity for constitutional theory, democratic governance, and racial justice.

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*“How long should I stay dedicated?
How long ’til opportunity meet preparation?”*
– Nipsey Hussle.¹

*“Now is the time to lift our national policy from the quicksand of racial
injustice to the solid rock of human dignity.”*
– Martin Luther King, Jr.²

INTRODUCTION

John Boyd, Jr., was only eighteen years old when he purchased his first farm.³ It was the early 1980s, more than a decade after the height of the Civil Rights Movement, yet Boyd recalls facing an atmosphere at the local USDA office reminiscent of the Jim Crow era.⁴ Boyd, a fourth-generation Black farmer from Virginia, knew the challenge of navigating the USDA’s complex system of financing, insurance, research, and education programs, especially as a Black man.⁵ But Boyd was, in many ways, one of the lucky ones.

This Essay argues that Boyd’s story reveals a broader pattern of oligarchic control over agricultural resources, in which a small elite has shaped policies to serve its social and economic interests, entrenching racial and economic hierarchies in the agricultural political economy. Agricultural oligarchy represents a distinct form of concentrated power that operates through economic control over land, credit, and markets; political influence over agricultural policy and rural governance; and cultural dominance over narratives about agricultural development and national identity. This system endures not through market competition but through the deliberate construction of barriers to entry, the capture of public institutions, and the deployment of state power to preserve

1. Nipsey Hussle, *Dedication*, on *Victory Lap* (CD, All Money In No Money Out & Atlantic Records Feb. 13, 2018).

2. Martin Luther King, Jr., Letter From Birmingham Jail, in *Why We Can’t Wait* 77, 90 (1963).

3. Scott McFetridge, *Black Farmers Sue Government for Promised Federal Aid*, PBS: NewsHour (Dec. 6, 2022), <https://www.pbs.org/newshour/politics/black-farmers-sue-government-for-promised-federal-aid> (on file with the *Columbia Law Review*).

4. *Id.*

5. *Id.*

existing hierarchies. Its ideological force persists through dignitary harms that undermine the full citizenship of marginalized groups—a process this Essay terms “structural extermination,” composed of three interlocking dynamics: exploitation, expropriation, and erasure.

Put simply, the story of American agriculture is one of oligarchic power—from slavery and the plantation economy to the consolidation of corporate control in the modern era. The antebellum plantation system constituted an oligarchy because it concentrated agricultural control in the hands of a small elite that used that power to shape legal frameworks, political representation, and cultural narratives to preserve its dominance. It was not merely an economic arrangement but also a comprehensive regime of social, political, and economic control, one that required the systematic subordination of Black agricultural labor to maintain both its material base and ideological legitimacy.

Although emancipation formally ended slavery, it did not dissolve the oligarchic structure underlying American agriculture. Instead, it proved remarkably adaptable, reconstituting itself through legal and economic mechanisms that preserved concentrated power while adjusting to new political conditions. Through sharecropping, discriminatory lending practices, and inequitable federal programs, White landowners sustained their wealth and influence across generations, perpetuating a system of racial and economic domination that continues to shape agricultural life today.⁶

For a brief period, the agricultural landscape looked markedly different. In the 1920s, nearly one million Black farmers were stewarding over sixteen million acres of land, about one-seventh of all U.S. farm operations at the time.⁷ Yet by the 1970s, decades of systemic discrimination had produced a staggering 90% decline in Black farm ownership.⁸ The federal government’s role in this decline was especially

6. See Areeba Haider, Adiam Tesfaselassie, Siddhartha Aneja & Sierra Wilson, *A Growing Problem: How Market Power in Agriculture Fuels Racial and Economic Inequality* 7 (2022), <https://www.georgetownpoverty.org/wp-content/uploads/2022/04/AGrowingProblem-April2022.pdf> [<https://perma.cc/G228-NT9K>] (explaining how market power, structural racism, and economic inequality resulted in structural discrimination against Black farmers).

7. See Kyle Ridgeway, *Broken Promises: The Continuing Decline of Black Farm Owners and Operators in America*, 27 U.C. Davis Soc. Just. L. Rev. 50, 52 (2023) (“Black farmers once made up fourteen percent of America’s farm owners . . .”); Abril Castro & Caius Z. Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, Ctr. for Am. Progress (Apr. 3, 2019), <https://www.americanprogress.org/article/progressive-governance-can-turn-tide-black-farmers/> (on file with the *Columbia Law Review*) (“At the height of black farming in 1920, black farmers operated 925,710 farms, about one-seventh of all farm operations in the United States.”).

8. See Dania V. Francis, Darrick Hamilton, Thomas W. Mitchell, Nathan A. Rosenberg & Bryce Wilson Stucki, *Black Land Loss: 1920–1997*, 112 AEA Papers & Procs. 38, 38 (2022) (“Black agricultural land ownership was at a peak just after the turn of the twentieth century; however, there was a nearly 90 percent decline in ownership from 1910 to 1997.” (citation omitted)). Compare 5 Bureau of the Census, U.S. Dep’t of Com.,

stark in 1983, when President Ronald Reagan's Administration eliminated the USDA's Office of Civil Rights Enforcement and Adjudication.⁹ The Office had already accumulated decades of complaints from Black farmers alleging racial discrimination by the Farmers Home Administration.¹⁰ Even after its Office of Civil Rights closed, the USDA continued to ignore complaints for another fifteen years, with some reports of staff throwing uninvestigated grievances into the trash.¹¹

The situation reached a breaking point in 1997 when Timothy Pigford filed a class action lawsuit against the USDA and then-Secretary of Agriculture Dan Glickman.¹² Pigford alleged that the USDA had systematically failed to address Black farmers' civil rights complaints from 1983 to 1997 and had disproportionately denied or delayed their loan applications.¹³ This discrimination was not speculative; the federal government had acknowledged its mistreatment of Black farmers in official reports dating back to 1965.¹⁴ *Pigford v. Glickman* ultimately became a landmark civil rights settlement, allocating more than \$1 billion to eligible claimants.¹⁵ But the pursuit of justice was fraught. The sheer volume of claimants led Congress to expand the settlement in 2008 to \$2.4

Thirteenth Census of the United States Taken in the Year 1910: Agriculture 1909 and 1910, at 182 & tbl. 16 (1914), <https://www.nass.usda.gov/AgCensus/archive/files/41033898v5ch03.pdf> [<https://perma.cc/S3PD-94FW>] (documenting 241,221 non-White farm owners in 1910 and finding that Black farm ownership increased 16.8% in the past decade), with 1 Nat'l Agric. Stat. Serv., USDA, 1997 Census of Agriculture: United States Summary and State Data 24 tbl. 16 (1999), https://www.nass.usda.gov/AgCensus/archive/files/1997-United_States-United_States_Data-1604-Table-16.pdf [<https://perma.cc/Y8W8-UMSY>] (documenting only 29,397 non-White full farm owners in 1997).

9. See Chris Kromm, *The Real Story of Racism at the USDA*, *The Nation* (July 23, 2010), <https://www.thenation.com/article/archive/real-story-racism-usda/> [<https://perma.cc/72RY-CXN5>] ("In 1983, President Reagan pushed through budget cuts that eliminated the USDA Office of Civil Rights—and officials admitted they 'simply threw discrimination complaints in the trash without ever responding to or investigating them' until 1996, when the office re-opened.").

10. See *Pigford v. Glickman*, 185 F.R.D. 82, 88 (D.D.C. 1999) (noting the massive backlog of complaints from Black farmers at the USDA due to the elimination of the USDA's Office of Civil Rights).

11. *Id.*

12. See *Pigford*, 185 F.R.D. at 86; April Simpson & Joe Yerardi, *Can USDA's Efforts on Equity Help Black Farmers Overcome 'Toxic Debt'?*, *Ctr. for Pub. Integrity* (Oct. 24, 2023), <https://publicintegrity.org/inequality-poverty-opportunity/the-heist/usda-equity-black-farmers-pigford-glickman-toxic-debt/> [<https://perma.cc/49LJ-MW2Z>].

13. See *Pigford*, 185 F.R.D. at 86 ("The plaintiffs in this case allege . . . that the United States Department of Agriculture . . . willfully discriminated against them . . . on the basis of their race when it denied their applications for credit and/or benefit programs or delayed processing their applications . . .").

14. See *infra* section II.A (discussing the *Pigford* cases).

15. Proposed Consent Decree at 15, *Pigford*, 185 F.R.D. 82 (Nos. 97-1978, 98-1693) (outlining the details of the settlement); Jasmin Melvin, *Black Farmers Win \$ 1.25 Billion in Discrimination Suit*, *Reuters* (Feb. 18, 2010), <https://www.reuters.com/article/world/us/black-farmers-win-125-billion-in-discrimination-suit-idUSTRE61H5XD/> [<https://perma.cc/9MNC-7T4N>].

billion and allow late filers to seek recourse in federal court.¹⁶ Even so, many Black farmers struggled to access relief, and for those who did, the compensation often fell short of addressing the deep-rooted injustices they had endured.¹⁷

Today, fewer than fifty thousand Black farmers remain, comprising less than 2% of all farmers.¹⁸ Further, Black-owned farms represent just 0.4% of all U.S. farmland.¹⁹ This drastic decline reflects not only past discrimination but also the continued consolidation of power under the rise of modern agricultural oligarchy. One of the most significant barriers to equity today is the dominance of large agribusiness corporations that control key aspects of the food system, from seed production to meatpacking.²⁰ Such concentration undermines the ability of small-scale and independent farmers—particularly Black and Indigenous farmers—to compete, access markets, and secure fair prices. For example, just four companies—Cargill, JBS, National Beef, and Tyson Foods—control more than 85% of the beef processing industry in the United States,²¹ enabling price manipulation and contract farming models that systematically disadvantage independent producers.²²

This corporate dominance is reinforced through political influence. Large agribusinesses spend millions lobbying Congress and shaping federal agricultural policy.²³ Groups such as the American Farm Bureau Federation have long opposed measures aimed at supporting small-scale and Black, Indigenous, and other historically marginalized farmers,

16. See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 14012, 122 Stat. 1651, 2209–12.

17. See Maia Foster & P.J. Austin, Rattlesnakes, Debt, and APRA § 1005: The Existential Crisis of American Black Farmers, 71 *Duke L.J. Online* 159, 166 (2022), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1093&context=dlj_online [<https://perma.cc/5XRF-PYL8>] (“Despite \$2.3 billion in *Pigford* payments, Black farmers have still not been made whole.” (citing Laura Reiley, Relief Bill Is Most Significant Legislation for Black Farmers Since Civil Rights Act, Experts Say, *Wash. Post* (Mar. 8, 2021), <https://www.washingtonpost.com/business/2021/03/08/reparations-black-farmers-stimulus> (on file with the *Columbia Law Review*))).

18. See Castro & Willingham, *supra* note 7 (“As of 2012, black farmers make up less than 2 percent of all farmers.”).

19. *Id.*

20. James M. MacDonald, Xiao Dong & Keith O. Fuglie, USDA, Concentration and Competition in U.S. Agribusiness 25–29 (2023), https://ers.usda.gov/sites/default/files/_laserfiche/publications/106795/EIB-256.pdf?v=57453 [<https://perma.cc/V2U8-AUAB>].

21. The Truth About Tyson, Union Concerned Scientists (Mar. 17, 2022), <https://www.ucs.org/resources/truth-about-tyson> [<https://perma.cc/8R2S-FD3X>] (last updated Sep. 19, 2024); see also MacDonald et al., *supra* note 20, at iii.

22. See MacDonald et al., *supra* note 20, at 2–5, 27 (showing that rising market concentration and vertically coordinated contract systems leave independent producers with little pricing power and subject to integrator-controlled terms).

23. See Agribusiness Lobbying, OpenSecrets (2024), <https://www.opensecrets.org/industries/lobbying?ind=A> (on file with the *Columbia Law Review*).

including recent debt relief initiatives.²⁴ Even more, oligarchic control extends to land acquisition. Corporate entities and billionaires have rapidly accumulated farmland across the country. Bill Gates, now among the nation's largest private farmland owners, exemplifies a broader trend that further constrains land access for new and historically marginalized farmers.²⁵ Such extreme concentration of economic and political power raises serious questions about the Constitution's commitment to republican government and meaningful participation within and among the states.

Despite these challenges, advocacy groups like the National Black Farmers Association, along with progressive leaders such as Senators Cory Booker and Elizabeth Warren, continue to press for justice.²⁶ In March 2021, President Joseph Biden took a significant step toward addressing these longstanding inequities through the American Rescue Plan Act (ARPA).²⁷ Echoing earlier Reconstruction-era efforts to disrupt Southern agricultural oligarchy, ARPA represented a renewed federal attempt to redistribute power within American agriculture. Section 1005 created the Farm Loan Assistance for Socially Disadvantaged Farmers and Ranchers program, allocating approximately \$4 billion toward debt relief, technical assistance, business development support, and agricultural education at historically black colleges and universities (HBCUs).²⁸ The Act also

24. See, e.g., Madison McVan, *The American Farm Bureau Federation Claims It's the 'Voice of Agriculture.' These Groups Beg to Differ.*, *Investigate Midwest* (Feb. 8, 2022), <https://investigatemitwest.org/2022/02/08/the-american-farm-bureau-federation-claims-its-the-voice-of-agriculture-these-groups-beg-to-differ/> [<https://perma.cc/DA3M-SD2B>] (discussing small-scale and alternative farmer groups' perception of the American Farm Bureau Federation as favoring large agribusiness interests and opposing reforms sought by marginalized producers).

25. Bill Gates, *The Land Report*, <https://landreport.com/land-report-100/bill-gates> [<https://perma.cc/TF3V-XGJJ>] (last visited Oct. 8, 2025) ("With almost 250,000 acres of highly productive farm ground spread out over 17 states, the co-founder of M[icrosoft] ranks as the nation's largest private farmland owner.").

26. See, e.g., Press Release, Cory Booker, Booker, Warren, Gillibrand Announce Comprehensive Bill to Address the History of Discrimination in Federal Agricultural Policy (Nov. 19, 2020), <https://www.booker.senate.gov/news/press/-booker-warren-gillibrand-announce-comprehensive-bill-to-address-the-history-of-discrimination-in-federal-agricultural-policy> [<https://perma.cc/5JS8-PVNY>] [hereinafter Press Release, Cory Booker, Comprehensive Bill]; Press Release, Env't Working Grp., National Black Farmers Association and EWG Applaud the Justice for Black Farmers Act (Nov. 19, 2020), <https://www.ewg.org/news-insights/news-release/national-black-farmers-association-and-ewg-applaud-justice-black-farmers> [<https://perma.cc/U5NF-8FPL>].

27. See American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (codified in scattered titles of the U.S.C.); see also Press Release, White House, President Biden Announces American Rescue Plan (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan/> [<https://perma.cc/3JWN-EHBZ>].

28. American Rescue Plan Act § 1005, repealed by Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 22008, 136 Stat. 1818, 2023; id. § 1006, amended by Inflation Reduction Act § 22007.

established an equity commission to examine the USDA's history of discrimination, signaling a broader commitment to institutional reform.²⁹

Yet the debt relief initiative quickly faced opposition from conservatives due to its race- and ethnicity-based eligibility criteria. Section 1005 provided loans to “socially disadvantaged” farmers, which a related statute defined as members of groups “subjected to racial or ethnic prejudice.”³⁰ Despite USDA clarification that this definition included all racial and ethnic groups,³¹ White farmers in multiple states—from Florida to Illinois, Minnesota, Tennessee, Texas, Wisconsin, and Wyoming, among others—filed lawsuits claiming constitutional violations.³² Several courts ruled that Congress had failed to justify its use of racial classifications and issued injunctions to halt the program.³³

29. American Rescue Plan Act § 1006 .

30. Id. § 1005 (repealed 2023); see also 7 U.S.C. § 2279(a)(6) (2018). Under the American Rescue Plan Act, “[t]he term ‘socially disadvantaged farmer or rancher’ has the meaning provided in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).” American Rescue Plan Act § 1005. Under the Food, Agriculture, Conservation, and Trade Act of 1990, “[t]he term ‘socially disadvantaged farmer or rancher’ means a farmer or rancher who is a member of a socially disadvantaged group.” 7 U.S.C. § 2279(a)(5). “The term ‘socially disadvantaged group’ means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” Id. § 2279(a)(6).

31. The USDA has updated the website containing this information, but a web archive reveals the previous information provided to the public to answer the question, “Would you further explain the meaning of the ‘socially disadvantaged farmer or rancher’ designation? What are the criteria for meeting such a designation?” American Rescue Plan Debt Payments FAQ, USDA, <https://web.archive.org/web/20210802115225/https://www.farmers.gov/loans/american-rescue-plan/faq> (on file with the *Columbia Law Review*) (last updated May 21, 2021). The USDA clarified that this designation was “not limited to” certain enumerated groups and that “[t]he Secretary of Agriculture [would] determine on a case-by-case basis whether additional groups qualify under this definition.” Id.

32. See *Carpenter v. Vilsack*, No. 21-CV-0103-F, 2022 WL 20813305 (D. Wyo. Oct. 7, 2022); *Rogers v. Vilsack*, No. 1:21-cv-01779-DDD-SKC, 2022 WL 1037574, at *1 (D. Colo. Mar. 31, 2022); *Miller v. Vilsack*, No. 4:21-cv-0595-O, 2021 WL 6129207, at *1 (N.D. Tex. Dec. 8, 2021), rev'd and remanded on other grounds, No. 21-11271, 2022 WL 851782 (5th Cir. Mar. 22, 2022); *Wynn v. Vilsack*, No. 3:21-cv-514-MMH-LLL, 2021 WL 7501821, at *1 (M.D. Fla. Dec. 7, 2021); *Kent v. Vilsack*, No. 3:21-cv-540-NJR, 2021 WL 6139523, at *1 (S.D. Ill. Nov. 10, 2021); *Dunlap v. Vilsack*, No. 2:21-cv-00942-SU, 2021 WL 4955037, at *1–2 (D. Or. Sep. 21, 2021); *Tiegs v. Vilsack*, No. 3:21-cv-147, 2021 U.S. Dist. LEXIS 218585, at *1–2 (D.N.D. Sep. 7, 2021); *McKinney v. Vilsack*, No. 2:21-CV-00212-RWS, 2021 U.S. Dist. LEXIS 218624, at *1–2 (E.D. Tex. Aug. 30, 2021); *Faust v. Vilsack*, No. 21-C-548, 2021 WL 4295769, at *1 (E.D. Wis. Aug. 23, 2021); *Joyner v. Vilsack*, 1:21-cv-01089-STA-jay, 2021 WL 3699869, at *1 (W.D. Tenn. Aug. 19, 2021); *Holman v. Vilsack*, 1:21-cv-01085-STA-jay, 2021 WL 3354169, at *1 (W.D. Tenn. Aug. 2, 2021); Complaint for Declaratory & Injunctive Relief at 2, *Nuest v. Vilsack*, 21-cv-01572-NEB-LIB (D. Minn. filed July 7, 2021) (on file with the *Columbia Law Review*).

33. See, e.g., *Faust v. Vilsack*, 519 F. Supp. 3d 470, 475–76 (E.D. Wis. 2021) (“Defendants point to statistical and anecdotal evidence of a history of discrimination within the agricultural industry. But Defendants cannot rely on a ‘generalized assertion that there has been past discrimination in an entire industry’ to establish a compelling interest.” (citations omitted) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989))

In response, Congress repealed section 1005 in August 2022 and replaced it with a new debt relief program under the Inflation Reduction Act of 2022 (IRA).³⁴ The IRA substituted the term “distressed” for “socially disadvantaged,” shifting focus to borrowers whose agricultural operations were financially at risk.³⁵ To address discrimination, the IRA allocated \$2.2 billion in financial assistance to farmers, ranchers, and forest landowners of any racial or ethnic background who had experienced USDA discrimination before January 1, 2021.³⁶ Notably, the IRA broadened the scope of protected categories to include sex, religion, age, marital status, and disability, expanding the reach of federal civil rights remedies beyond racial or ethnic discrimination alone.³⁷

The repeal of section 1005 and the enactment of the IRA reignited debates over race-conscious policymaking. Critics argued that the repeal validated their claim that section 1005 was unlawful and that government benefits should not depend on race.³⁸ Others described President Biden’s initial equity-focused program as political opportunism, accusing him of playing the “race card” without a public mandate.³⁹ *Wynn v. Vilsack*, which resulted in a preliminary injunction against the original debt relief program, illustrates the broader tension between racial justice initiatives

(citing Defendants’ Opposition to Plaintiffs’ Motion for a Temporary Restraining Order at 16–17, *Faust*, 519 F. Supp. 3d 470).

34. Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 22008, 136 Stat. 1818, 2023.

35. See id. § 22006, 136 Stat. at 2021; Race-Based COVID-19 Farm Loan Forgiveness Denies Equal Treatment to Farmers: *Wynn v. Vilsack*, Pac. Legal Found., <https://pacificlegal.org/case/farm-loan-forgiveness/> [<https://perma.cc/P4WK-ZS85>] (last visited Oct. 8, 2025).

36. Inflation Reduction Act § 22007.

37. See Press Release, USDA, USDA Reminds Producers of Upcoming Discrimination Financial Assistance Program Deadline (Jan. 8, 2024), <https://www.usda.gov/about-usda/news/press-releases/2024/01/08/usda-reminds-producers-upcoming-discrimination-financial-assistance-program-deadline> [<https://perma.cc/9P2G-N3QQ>] (referencing the protected categories in explaining the Act).

38. Alan Rappoport, Climate and Tax Bill Rewrites Embattled Black Farmer Relief Program, N.Y. Times (Aug. 12, 2022), <https://www.nytimes.com/2022/08/12/business/economy/inflation-reduction-act-black-farmers.html> (on file with the *Columbia Law Review*) (“Generally speaking, our view is that you can’t condition government benefits on the basis of race” (internal quotation marks omitted) (quoting Rick M. Esenberg, President, Wis. Inst. for L. & Liberty)).

39. George R. La Noue, The Race Card in ARPA’s Food Supply Deck, 22 *Federalist Soc’y Rev.* 184, 184 (2021) (arguing that the Small Business Administration prioritized women, racial minorities, and veterans in its fund dispersal guidelines when it could have defined its grant priorities in other ways); Jason Smith, Opinion, One Year Later: Why Biden’s ‘American Rescue’ Failed, Wash. Exam’r (Mar. 15, 2022), <https://www.washingtonexaminer.com/opinion/op-eds/one-year-later-why-bidens-american-rescue-failed> (on file with the *Columbia Law Review*) (citing a survey result and concluding that “only 21% of voters believe the law has helped them, whereas 29% say it has left them worse off”).

and constitutional doctrines of equal protection.⁴⁰ The decision also highlights the limits of “colorblind constitutionalism,”⁴¹ which, though seemingly aligned with equal protection principles, often fails to grapple with the enduring effects of historical discrimination and systemic racism.⁴² This tension poses ongoing challenges for policymakers and advocates seeking to dismantle the structural barriers confronting Black farmers and other marginalized agricultural communities.

As the United States continues to grapple with these issues, the USDA Equity Commission, established in 2021, marks an important step toward a more comprehensive response to racial inequities in agriculture.⁴³ The Commission’s 2024 Final Report offers valuable insights into the complex nature of discrimination in agriculture and recommends systemic reforms beyond individualized remedies.⁴⁴ By blending race-conscious and class-based strategies, the Commission offers a potential path forward for addressing racial disparities while navigating the legal and political constraints surrounding race-based programs. This Essay contributes to that ongoing dialogue by examining the historical, legal, and policy dimensions of racial injustice in American agriculture, and situating those inequities within the enduring persistence of oligarchic power since the antebellum era.

40. 545 F. Supp. 3d 1271 (M.D. Fla. 2021); see also *infra* section III.B (discussing the *Wynn* case).

41. The idea of colorblind constitutionalism originates with Justice John Marshall Harlan’s dissent in the landmark 1896 case *Plessy v. Ferguson*, in which he stated: “Our constitution is color-blind, and neither knows nor tolerates classes among citizens.” 163 U.S. 537, 559 (1896); see also Malik Edwards & William A. Darity, Jr., *Why Color-Blind Solutions Won’t Solve the Racial Wealth Gap: How We Can Overcome the Constitutional Hurdles to Race Conscious Remedies in Addressing the Wealth Gap*, 110 Ky. L.J. 769, 771 (2022) (“The Court’s apparent failure to appreciate the potential of racialized effects in seemingly race-neutral policies, and the federal role in these policies’ implementation, has limited the fortitude to use race in creating remedies.”); Goldburn P. Maynard, Jr., *Biden’s Gambit: Advancing Racial Equity While Relying on a Race-Neutral Tax Code*, 131 Yale L.J. Forum 656, 673 (2022), https://www.yalelawjournal.org/pdf/F7.MaynardFinalDraftWEB_jx79r4rp.pdf [<https://perma.cc/7ZVV-TK63>] (“[C]ourts have tightened the reins on the use of any racial classifications, regardless of purpose. Whether they are pernicious or meant to ameliorate discrimination, such policies are treated with suspicion.”).

42. See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2173 (2023) (rejecting consideration of race in college admissions despite arguments about ongoing effects of historical discrimination); Darren Lenard Hutchinson, *Undignified: The Supreme Court, Racial Justice, and Dignity Claims*, 69 Fla. L. Rev. 1, 15 (2017) (“The rigid application of the colorblindness doctrine impedes race-based state action implemented to remedy the harmful consequences of historical and present-day discrimination.”).

43. American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 1006, 135 Stat. 4, 13–14; see also Exec. Order No. 13,985, 86 Fed. Reg. 7009 (laying out a foundational commitment to advancing equity).

44. USDA Equity Comm’n, Final Report 8–9 (2024), https://www.farmaid.org/wp-content/uploads/2025/02/usda_equity_commission_final_report-2024.pdf [<https://perma.cc/8VY5-CCXC>].

This Essay proceeds as follows. Part I traces the ideological foundations of agricultural oligarchy, showing how the systematic subjugation of Black farmers through exploitation, expropriation, and erasure has been essential to maintaining concentrated agricultural power from slavery to the present. It reveals how agricultural oligarchy has sustained itself not only through economic control but also by embedding White supremacist ideology so deeply within agricultural institutions that concentrated power appears natural rather than constructed.

Part II analyzes the major legal and legislative efforts undertaken to redress historical injustices against Black farmers, proceeding chronologically through three phases: the *Pigford* litigation, recent legislative initiatives including the Justice for Black Farmers Act and the American Rescue Plan Act debt relief program, and the political and legal resistance these efforts have encountered. Together, these developments reveal both meaningful progress and the enduring national ambivalence about race-conscious remedies.

Part III examines how colorblind constitutionalism constrains congressional authority to implement race-conscious relief programs, using *Wynn v. Vilsack* as a key case study. It demonstrates how contemporary equal protection jurisprudence may paradoxically entrench, rather than dismantle, systems of racial hierarchy and economic concentration, highlighting the complex legal terrain in which race-based agricultural remedies must operate.

Part IV draws lessons from the USDA Equity Commission's 2024 report and its subsequent dismantling under the Trump Administration to identify principles for designing more resilient equity initiatives. It argues that the systematic elimination of equity programs exposes the vulnerability of reform efforts to oligarchic capture, while also offering guidance for crafting legislative and policy interventions capable of withstanding concentrated economic and political opposition.

Taken together, this Essay reveals the deep-rooted connection between race, agriculture, and systemic injustice in America. It highlights how the concentration of agricultural power within a small elite group, from the plantation era to the present, has produced and perpetuated racial and economic inequities. Despite recent legislative reforms, the modern agricultural oligarchy continues to reinforce structural barriers that limit opportunities for Black farmers and reproduce cycles of exclusion and disempowerment. These struggles reflect broader patterns of racial capitalism, economic inequality, and rural disinvestment. Meaningful efforts to advance racial equity in agriculture must therefore confront the persistent concentration of power and resources within the sector to build a more just and equitable society for all Americans.

I. THE IDEOLOGICAL ORIGINS OF AGRICULTURAL OLIGARCHY

The history of Black farmers in the United States is not merely a chronicle of systemic neglect. It is the story of a deliberately sustained agricultural oligarchy that endures from slavery to the present. From the brutal exploitation of enslaved labor to the subtler institutional biases of modern policy, Black farmers have long faced a regime designed to concentrate power and restrict access to land, capital, and markets. Their experience reflects more than historical injustice; it exemplifies what this Essay identifies as “structural extermination”—a process composed of three interlocking dynamics: exploitation, expropriation, and erasure.⁴⁵

Understanding the durability of agricultural oligarchy requires examining its ideological foundations. This power has been maintained not merely through economic control but by embedding White supremacist ideology so deeply within agricultural institutions that it appears natural and inevitable rather than constructed and contingent. These ideologies conflate agricultural productivity with racial hierarchy, creating cultural narratives that justify concentrated power as both economically efficient and morally legitimate. They enable agricultural elites to sustain their dominance across generations by systematically undermining Black farmers’ rights, resources, and recognition, while obscuring the political choices that created and maintain this system.

This Part exposes these ideological foundations by demonstrating how the systematic subjugation of Black farmers has been essential to preserving agricultural oligarchy from its antebellum origins to its contemporary manifestations. Agricultural oligarchy has never been merely economic; it is a comprehensive regime of social, political, and cultural control, one that requires the ongoing subordination of Black farmers to maintain its legitimacy.

The analysis unfolds across four sections. First, section I.A establishes the theoretical framework, drawing on concepts of structural oppression, “dignitary harms,”⁴⁶ and oligarchy to provide the tools for understanding how agricultural power has been concentrated and maintained through the systematic exclusion of Black farmers. This framework clarifies why viewing American agriculture as an oligarchy—rather than simply a market system with discriminatory outcomes—is essential to grasping both historical patterns and contemporary dynamics.

45. See Etienne C. Toussaint, *Black Urban Ecologies and Structural Extermination*, 45 *Harv. Env’t L. Rev.* 447, 456 (2021) (“[T]hese forces distort urban agriculture into a weapon of exploitation, expropriation, and erasure, each foundational elements of a social theory of ecological systems change this Author calls *structural extermination*.”).

46. See Etienne C. Toussaint, *The Abolition of Food Oppression*, 111 *Geo. L.J.* 1043, 1054 (2023) [hereinafter Toussaint, *Abolition*] (explaining the concept of dignitary harms, which “established the social inferiority of Black people” and “granted moral legitimacy to the ideology of White supremacy”).

Section I.B examines exploitation, focusing on historical regimes such as chattel slavery, convict leasing, and sharecropping. These systems inflicted equality-based dignitary harms by denying Black Americans recognition as equal participants in agricultural production. By linking productivity to Black subordination, these systems created legal and cultural precedents that continue to justify concentrated agricultural power.

Section I.C analyzes expropriation, detailing the systematic dispossession of Black-owned land through discriminatory policies, lending practices, and state-sanctioned violence. These liberty-based dignitary harms reveal how agricultural oligarchy adapts across historical periods, using both economic and ideological mechanisms to reinforce narratives of White agricultural superiority while consolidating land and political power.

Finally, section I.D addresses erasure, examining how the contributions and struggles of Black farmers have been rendered invisible in agricultural policy and popular cultural narratives. These integrity-based dignitary harms reveal how agricultural oligarchy preserves its ideological dominance by controlling not only material resources but also public memory and discourse.

Together, these three dimensions of structural extermination show that agricultural oligarchy sustains itself by making the subordination of Black farmers appear as a natural consequence of modernization rather than a deliberate political project. This ideological work is central to oligarchic control, obscuring the dependence of concentrated agricultural power on the ongoing exclusion and exploitation of Black farmers. By exposing these origins, this Part argues that dismantling agricultural oligarchy requires not only policy reform but a fundamental challenge to the cultural narratives that have long justified the concentration of agricultural power in White hands.

A. *Structural Oppression, Dignitary Harms, and Agricultural Oligarchy*

The systematic subordination of Black farmers cannot be understood through conventional frameworks that cast racial discrimination as isolated market failures or episodes of policy neglect. Rather, it reflects the deliberate construction and preservation of an agricultural oligarchy that has long depended on the exclusion of Black farmers to maintain concentrated economic and political power. This section develops the conceptual tools necessary to analyze this system, drawing on theories of dignitary harm and political economy to show how agricultural oligarchy operates simultaneously as an economic regime and an ideological project.

Political theorist Iris Marion Young's conception of oppression as "systemic constraints on groups"⁴⁷ provides a useful foundation for understanding the intertwined economic, political, and cultural forces that have marginalized Black farmers while entrenching agrarian elites. Her "five faces of oppression"—exploitation, marginalization, powerlessness, cultural imperialism, and violence—help illuminate how agricultural policy has functioned as a mechanism of oligarchic control.⁴⁸ Yet Young's framework, while powerful in mapping patterns of group-based subordination, requires extension to capture the particular dynamics of agricultural power and the constitutional dimensions of dignitary harm that characterize the Black farmer experience.

Although Young's structural approach was groundbreaking in moving beyond individualistic accounts of inequality, it has been critiqued for underemphasizing the agency of oppressed groups and the mechanisms through which oppressive systems adapt to resistance.⁴⁹ Critics caution that her framework may inadvertently reify group boundaries or obscure the dynamic processes that allow systems of domination to persist.⁵⁰ These limitations underscore the need for analytical tools capable of explaining both the structural durability and the adaptive evolution of oppressive regimes—tools that account for not only how oppression operates, but also how it reconstitutes itself across historical periods to secure elite control.

47. Iris Young, *Five Faces of Oppression*, in *Oppression, Privilege, and Resistance: Theoretical Perspectives on Racism, Sexism, and Heterosexism* 37, 39 (Lisa Heldke & Peg O'Connor eds., 2004).

48. *Id.* at 38; see also, e.g., Angela Hilmers, David C. Hilmers & Jayna Dave, *Neighborhood Disparities in Access to Healthy Foods and Their Effects on Environmental Justice*, 102 *Am. J. Pub. Health* 1644, 1644 (2012) (describing how barriers to access to healthy food "represent a significant challenge to ethnic minorities and underserved populations and violate the principle of fair treatment"); Sonari Glington, *How Racism in Agriculture Built America's Food Apartheid*, *Forbes* (Apr. 29, 2025), <https://www.forbes.com/sites/sonariglington/2025/04/29/how-racism-in-agriculture-built-americas-food-apartheid/> (on file with the *Columbia Law Review*) ("[T]he problems of the inner cities are the problems of Black farmers, 'this isn't just about food. It's about control. It's about who gets to feed who. And who gets fed lies. . . . We are not disconnected from the food system, we've been deliberately cut off" (quoting Anton Seals Jr., Exec. Dir., *Grow Greater Englewood*)); Andrew Small, *How Fast Food Cornered the Urban Market*, *Bloomberg* (Mar. 31, 2017), <https://www.bloomberg.com/news/articles/2017-03-31/how-the-government-promoted-fast-food-in-cities> [<https://perma.cc/57EG-WXTB>] ("The design of fast food franchises—and their ubiquity in communities that may otherwise be labeled 'food deserts'—helped cement their key roles in low-income areas.").

49. See, e.g., Tamara Jugov & Lea Ypi, *Structural Injustice, Epistemic Opacity, and the Responsibilities of the Oppressed*, 50 *J. Soc. Phil.* 7, 8 (2019) ("[E]ven if the way such distributions and social rules come about is independent of the will and/or intentions of any particular agent, such agents can nevertheless be attributed political responsibilities for the structural upshots of their actions."); Michael D. Kuchem, Young, Gilbert, and Social Groups, 46 *Soc. Theory & Prac.* 737, 738–39 (2020) (arguing that Young's group concept lacks sufficient pluralistic nuance); Maeve McKeown, *Structural Injustice*, *Phil. Compass*, July 2021, at 1, 5–8 (highlighting how systems adapt and persist beyond individual actions).

50. See *supra* note 49.

1. *Dignitary Harms: A Tripartite Framework.* — The concept of dignitary harms offers a more precise framework for analyzing both the constitutional dimensions of Black farmers' subordination and the ideological work that sustains agricultural oligarchy. This Essay defines "dignity" through three interrelated dimensions that together illuminate how agricultural oligarchy has eroded Black farmers' full citizenship while legitimizing concentrated power.⁵¹

Equality-based dignitary harms concern the basic recognition of inherent human worth and the equal opportunity to express one's capabilities.⁵² When groups are systematically treated as less than fully human—denied acknowledgment of their agricultural skill, innovation, or stewardship—they suffer equality-based dignitary harms.⁵³ These harms arise not only from exclusion but from cultural narratives that naturalize Black subordination. Racial hierarchy has long served agricultural oligarchy by providing a moral rationale for what would otherwise appear as pure economic exploitation, reframing structural domination as differences in aptitude or deservingness.

Liberty-based dignitary harms involve the curtailment of individuals' ability to govern their own lives.⁵⁴ Related to philosophical traditions that

51. Despite the increasing usage of the term "dignity" by the U.S. Supreme Court in recent history, its application remains largely rhetorical. Dignity is invoked to elucidate the underlying principles of equal protection or liberty in rights-based disputes, but remains undefined within U.S. law. See Leslie Meltzer Henry, *The Jurisprudence of Dignity*, 160 U. Pa. L. Rev. 169, 178–81 (2011) ("The Court's repeated appeals to dignity, particularly in majority opinions, appear to parallel its greater willingness to proffer dignity as a substantive value animating our constitutional rights."). This Essay's definition draws from prior scholarship on dignity and the law. See, e.g., Neomi Rao, *Three Concepts of Dignity in Constitutional Law*, 86 Notre Dame L. Rev. 183, 187–89 (2011) (discussing various conceptions of dignity, including "dignity as recognition" which "reflects a new political demand . . . [for] third-generation 'solidarity rights'"); Toussaint, *Abolition*, supra note 46, at 1054–55 (discussing dignity through the framework of equality, liberty, and integrity).

52. See Michael Ignatieff, *Human Rights as Politics and Idolatry* 165 (Amy Gutmann ed., 2001) ("Dignity as agency is thus the most plural, the most open definition of the word I can think of."); Alan Gewirth, *Human Dignity as the Basis of Rights*, in *The Constitution of Rights: Human Dignity and American Values* 10, 12 (Michael J. Meyer & William A. Parent eds., 1992) ("*Dignity* signifies a kind of intrinsic worth that belongs equally to all human beings as such, constituted by certain intrinsically valuable aspects of being human."); Charles Taylor, *The Politics of Recognition*, in *Multiculturalism: Examining the Politics of Recognition* 25, 57 (Amy Gutmann ed., 1994) [hereinafter Taylor, *Politics of Recognition*] ("[T]his [liberal] view understands human dignity to consist largely in autonomy, that is, in the ability of each person to determine for himself or herself a view of the good life.").

53. See Toussaint, *Abolition*, supra note 46, at 1101–08 ("[T]he Court finds an equality-based dignitary harm when a law, public policy, or social practice fails to recognize the inherent equality of all people in society by treating certain groups differently than others based upon their suspect classifications . . .").

54. See *id.* at 1108 ("The idea of liberty as the basis for human dignity—a sense that the inherent equality of humans as such must be linked to the human capacity to express rational thinking and self-awareness as autonomous and self-determined agents—has historically been associated with the German philosopher Immanuel Kant.").

locate dignity in self-authorship, liberty-based dignitary harms occur when legal and economic structures foreclose meaningful avenues for self-determination.⁵⁵ For Black farmers, this has meant exclusion from land ownership, credit, and markets—constraints that deny not only economic opportunity but also the ability to participate as free agents in agricultural life.⁵⁶ Such restrictions reveal how oligarchic control depends on more than concentrated assets; it requires actively preventing alternative agricultural arrangements that might threaten elite dominance.

Integrity-based dignitary harms concern individuals' ability to achieve social recognition as full members of their political community. These harms arise when groups are denied the esteem necessary for experiencing full citizenship, which requires both internal self-worth and external validation.⁵⁷ The erasure of Black agricultural contributions, the dismissal of their claims for redress, and their exclusion from policymaking all constitute integrity-based dignitary harms that fracture citizenship by withholding social recognition.⁵⁸ This dimension is particularly vital to understanding agricultural oligarchy because it enables the system to present itself as legitimate and democratic while systematically excluding those whose participation would unsettle concentrated power.

55. See *id.* (“To Kant, experiencing one’s humanity in society—the act of *being* human as action, not merely as status—meant making choices; choices derived from the human capacity to determine the moral law and choose to live by it, or to locate an end in oneself.”).

56. See Rural Bus.-Coop. Serv., USDA, *Black Farmers in America, 1865–2000*, at 1, 15–17 (2002), <https://www.rd.usda.gov/files/RR194.pdf> (on file with the *Columbia Law Review*) (documenting long-standing exclusion of Black farmers from land ownership and credit access, including USDA programs that “reduced opportunities . . . especially [for] black[] [farmers], to enter the business of farming” and describing discriminatory delays and denials of credit that prevented Black farmers from maintaining or expanding family landholdings).

57. See Isaiah Berlin, *Two Concepts of Liberty*, in *Liberty* 166, 166 n.2 (Henry Hardy ed., 2d ed. 2002) (“I cannot ignore the attitude of others . . . for I am in my own eyes as others see me. I identify myself with the point of view of my milieu: I feel myself to be somebody or nobody in terms of my position and function in the social whole . . .”); Rao, *supra* note 51, at 246 (“Individual identity and worth depend on membership in the community and recognition from others within the community.”); Toussaint, *Abolition*, *supra* note 46, at 1115 (“[T]he integrity-based conception of dignity . . . suggests that certain choices can enhance or hinder one’s ability to experience inherent equal humanity based upon a theory that one’s self-realization of his or her own humanity depends upon their relationship to a greater social whole.”).

58. See George Herbert Mead, *Mind, Self, and Society: The Definitive Edition* 162 (Charles W. Morris ed., Daniel R. Huebner & Hans Joas annot., 2015) (“A person is a personality because he belongs to a community, because he takes over the institutions of that community into his own conduct . . . [O]ne has to be a member of a community to be a self.”); Joseph Raz, *Free Expression and Personal Identification*, 11 *Oxford J. Legal Stud.* 303, 313 (1991) (“People’s relations to the society in which they live is a major component in their personal well-being. It is normally vital for personal prosperity that one will be able to identify with one’s society, will not be alienated from it, will feel a full member of it.”).

Together, these three dimensions reveal that dignitary harms function not merely as individual injuries but as systemic mechanisms that preserve oligarchic control by undermining the full citizenship of those most likely to challenge economic and political concentration in agriculture.

2. *From Racial Capitalism to Agricultural Oligarchy.* — While political theorist Cedric Robinson’s theory of “racial capitalism” powerfully illustrates how U.S. capitalism has always been structured through racial domination,⁵⁹ the concept of oligarchy provides additional explanatory force for understanding agricultural systems. Robinson’s work shows that racial exploitation is constitutive of American capitalism, not a deviation from otherwise neutral markets,⁶⁰ and it dismantles liberal accounts that frame discrimination as market failure.⁶¹ Yet agricultural systems present distinct challenges that require closer attention to how economic concentration becomes political power, and how control over essential resources sustains both.

Viewed through a political economy lens, oligarchy describes systems in which concentrated economic power enables political dominance and produces self-reinforcing cycles of control.⁶² Oligarchy entails more than wealth aggregation; it involves capturing political institutions, shaping legal frameworks, and manipulating cultural narratives to secure elite advantage. Understanding agriculture through this framework highlights dynamics that racial capitalism alone does not fully illuminate: the centrality of land control to democratic participation, the role of agricultural policy in structuring political coalitions, and the capacity of agricultural elites to maintain power across radically different economic eras.

Agricultural oligarchy occupies a distinctive position because agriculture governs fundamental human needs, historically significant sources of wealth, and deeply rooted cultural symbols shaping national identity. In the United States, agricultural oligarchy has persisted from the slaveholding aristocracy to modern corporate agribusiness by continually

59. See Cedric J. Robinson, *Black Marxism: The Making of Black Radical Tradition* 2 (Univ. N.C. Press, 3rd ed. 2000) (1983).

60. Robinson argued that “[t]he development, organization, and expansion of capitalist society in [the West] pursued essentially racial directions.” *Id.*; see also Robin D.G. Kelley, Foreword to *id.*, at xiv–xvii (noting how Robinson developed the term “racial capitalism” into “a framework for understanding the general history of capitalism”); Robinson, *supra* note 59, at 27 (“Race became largely the rationalization for the domination, exploitation, and/or extermination of non-‘Europeans’ (including Slavs and Jews).”).

61. Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 *Yale L.J.* 1784, 1799–800 & n.58 (2020) (foregrounding extractive social reproduction as constitutive rather than incidental).

62. See Erik Olin Wright, *Understanding Class* 7–11 (2015) [hereinafter Wright, *Understanding Class*] (describing the ways in which “opportunity-hoarding mechanisms” create concentrations of power for landowners at the expense of nonlandowners).

adapting its methods while preserving its core structure: concentrated power sustained through the systematic exclusion of marginalized groups, especially Black farmers.

This form of oligarchy operates through interconnected mechanisms: economic control over land, credit, and markets; political influence over agricultural governance; and cultural dominance over narratives of agricultural development and national belonging. It survives not through competition but through the construction of barriers to entry, the capture of public institutions, and the deployment of state power to entrench hierarchy. Racialization has been central to this project because it transforms economic domination into seemingly natural differences in capacity or worth.

The concept of agricultural oligarchy thus extends racial capitalism by offering tools to analyze how agricultural power specifically operates, how it adapts over time, and why dismantling it requires more than policy reform. It demands confronting the underlying concentration of economic and political power. This theoretical lens clarifies how the three components of structural extermination—exploitation, expropriation, and erasure—function as integrated strategies for maintaining oligarchic control while inflicting dignitary harms that undermine the democratic citizenship of Black farmers and other marginalized rural communities.

B. *Exploitation and Equality-Based Dignitary Harms*

The framework developed above reveals how agricultural oligarchy has sustained itself by inflicting dignitary harms that undermine the full citizenship of marginalized groups. The first dimension of structural extermination—exploitation—demonstrates how this oligarchy has long depended on equality-based dignitary harms, systematically treating Black agricultural laborers as less than fully human to justify concentrated power and extract economic value. This section traces the evolution of agricultural oligarchy from its antebellum foundations through post-emancipation adaptations and New Deal consolidation, highlighting the continuity of oligarchic control across shifting legal regimes.

The antebellum South produced the first fully developed agricultural oligarchy in American history. Although terms such as “plantation aristocracy” and “planter elite” capture aspects of its social hierarchy, agricultural oligarchy more precisely describes its political economy. Unlike aristocracy, which implies legitimacy grounded in hereditary status, oligarchy emphasizes the political project of maintaining concentrated power through the deliberate capture of economic, legal, and cultural institutions. The plantation system was oligarchic because a small elite class used control over land and labor to shape law, governance, and public narratives in ways that preserved their dominance.

This oligarchy operated not simply as an economic arrangement but as a comprehensive regime of social and political control. It required the

systematic subordination of Black agricultural labor to maintain both its material base and ideological legitimacy. Racialized exploitation was essential. Without denying Black humanity, the extreme concentration of agricultural power would have been difficult to justify in a nominal democracy.

The impact of this system on human dignity was profound. Enslaved people, whose agricultural expertise enriched the nation, were coerced into labor under conditions of total domination. Their bodies were commodified, their agency extinguished, and their productivity captured exclusively for the benefit of enslavers.⁶³ These practices enriched not only individual planters but a broader oligarchic class whose influence extended nationally. The slaveholding oligarchy shaped federal economic policy, constitutional doctrine, and political institutions, all while defending a system built on the systematic degradation of Black life.⁶⁴

By 1860, the estimated market value of enslaved persons exceeded \$3 billion—more than the combined value of all American railroads, factories, and banks.⁶⁵ This figure illustrates that U.S. agriculture had been deliberately structured around the commodification of Black labor. Oligarchic dominance rested on physical violence, psychological coercion, and material deprivation⁶⁶—mechanisms that rendered enslaved people functionally powerless in precisely the manner Young identifies as central to oppressive systems.⁶⁷

63. See James M. McPherson, *Battle Cry of Freedom: The Civil War Era 78–117* (1988) (discussing the forced labor of enslaved people and the economic dependence of the South on this system).

64. See Matthew Desmond, *In Order to Understand the Brutality of American Capitalism, You Have to Start on the Plantation*, N.Y. Times Mag. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html> (on file with the *Columbia Law Review*) (“What made the cotton economy boom in the United States . . . was our nation’s unflinching willingness to use violence on nonwhite people and to exert its will on seemingly endless supplies of land and labor.”); see also Nikole Hannah-Jones, *Democracy*, in *The 1619 Project: A New Origin Story* 7, 32 (Nikole Hannah-Jones, Caitlin Roper, Ilena Silverman & Jake Silverstein eds., 2019) (“To answer . . . how they could prize liberty abroad while simultaneously denying liberty to an entire race back home, white Americans resorted to the same racist ideology that . . . the framers had used at the nation’s founding: that Black people were an inferior race whose degraded status justified their treatment.”).

65. See Steven Deyle, *The Domestic Slave Trade in America: The Lifeblood of the Southern Slave System*, in *The Chattel Principle: Internal Slave Trades in the Americas* 91, 95 (Walter Johnson ed., 2005) (noting that the total value of the enslaved population in 1860 was at least \$3 billion, roughly three times of what was invested in manufacturing, three times that in railroad, and seven times that in banks in the North and South combined).

66. See Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* 116–18, 136 (2014) (discussing physical and psychological methods used to coerce labor from enslaved populations).

67. See Young, *supra* note 47, at 52 (“[M]ost people in these societies do not regularly participate in making decisions that affect the conditions of their lives and actions, and in this sense most people lack significant power.”).

White supremacist cultural narratives further fortified this regime. By portraying Black people as savage and subhuman while framing poverty as a moral failing, these narratives normalized slavery and concealed the role of power in shaping agricultural development.⁶⁸ Embedding anti-Blackness within dominant legal and cultural frameworks ensured that opposition to slavery could be cast as radical and illegitimate.⁶⁹ Such ideological work allowed oligarchic domination to appear natural rather than political, transforming exploitation into an alleged reflection of human inequality.

This system extended far beyond individual plantations. Slaveholding elites dominated Southern legislatures, crafted laws that protected slavery and suppressed Black mobility, and prevented challenges to agricultural concentration.⁷⁰ The judiciary interpreted legal frameworks in ways that favored slaveholding interests, treating enslaved persons as property.⁷¹ Law enforcement, from slave patrols to militias, functioned as the armed wing of the oligarchy, deploying state-sanctioned violence to maintain racial subordination.⁷² These forms of institutional capture demonstrate that agricultural oligarchy rests not merely on market dynamics alone but also on the active deployment of state power.

After emancipation, the agricultural oligarchy proved remarkably adaptable. Its core structure—concentrated landownership and racialized labor control—survived through new legal and economic mechanisms.⁷³ Convict leasing exemplified this transition, reproducing the coercive conditions of slavery through the criminal legal system.⁷⁴ Enabled by the

68. See Oscar Lewis, *The Culture of Poverty*, in *On Understanding Poverty: Perspectives From the Social Sciences* 187, 199 (Daniel P. Moynihan ed., 1969) (“The subculture [of poverty] develops mechanisms that tend to perpetuate it, especially because of what happens to the world view, aspirations, and character of the children who grow up in it.”).

69. See Matthew Desmond, *Capitalism*, in *The 1619 Project: A New Origin Story*, supra note 64, at 165, 172–75 (noting the capitalist cooptation of the Fifth and Fourteenth Amendments and how slavery supported a new economy in which a culture of speculation “produced staggering inequality and undignified working conditions”).

70. See George William Van Cleve, *A Slaveholders’ Union: Slavery, Politics, and the Constitution in the Early American Republic 200–23* (2010) (discussing the passage of laws that protected interests of both slave traders and states that wanted to import slaves).

71. See *id.* at 272 (“The Court’s nominal power of judicial review was a dead letter at that time where major political intervention on the issue of slavery was concerned.”).

72. See Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas 143–47* (2001) (discussing the increased number of slave patrols and use of violence due to fear of slave insurrections).

73. See Edward Royce, *The Origins of Southern Sharecropping 1–2* (1993) (“Throughout the period from roughly 1865 through 1867, despite the abolition of slavery, the plantation remained the basic unit of production By 1868, sharecropping was well on its way toward becoming the principal replacement for slavery and the dominant economic arrangement in postbellum southern agriculture.”).

74. See V. Camille Westmont & Cayla B. Colclasure, *An Archaeology of Convict Leasing in the American South*, 13 *J. Afr. Diaspora Archaeology & Heritage* 134, 134–35

Thirteenth Amendment's Exceptions Clause, which permits involuntary servitude as punishment for crime,⁷⁵ Southern states enacted laws targeting Black communities. Vagrancy statutes, trespassing ordinances, and other Black Codes criminalized everyday behaviors, funneling Black people into forced labor under the guise of criminal punishment.⁷⁶ The ideological scaffolding of White supremacy remained intact, enabling agricultural elites to maintain a cheap, unfree labor supply under a veneer of legality.⁷⁷

Sharecropping represented the oligarchy's most durable post-emancipation adaptation.⁷⁸ Rather than dismantling plantation power,

(2024) (defining the postbellum Southern convict lease system as a racialized form of forced labor designed to control newly emancipated African Americans, driven by state profit motives, and marked by extreme brutality, disposability, and mortality); see also Christopher Muller, *Freedom and Convict Leasing in the Postbellum South*, 124 *Am. J. Socio.* 367, 368 (2018) (describing Georgia's convict lease system as resembling slavery in its violence and commodification of prisoners but distinguishing it as an industrial rather than agricultural labor regime that functioned as a punitive response to Black economic independence); Michael Ralph, *Slavery and Incarceration in the Frontier: The Origin of Convict Leasing*, 16 *J. Cultural Econ.* 337, 339 (2023) (situating the origins of convict leasing in Kentucky's frontier prisons, where debtors and incarcerated people were leased for profit before the Civil War).

75. See U.S. Const. amend. XIII, § 1 ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."); see also *Slavery by Another Name*, PBS (2012) <https://www.pbs.org/tpt/slavery-by-another-name/themes/convict-leasing/> [<https://perma.cc/G7R3-UCWZPERMA>] (describing the development of the market for convict laborers); 13th, Netflix (Kandoo Films 2016) (connecting the disproportionate amount of African Americans in prison to enslavement and the Thirteenth Amendment of the U.S. Constitution, which allows slavery as punishment for a crime).

76. Brian Sawers, *What Lies Behind that 'No Trespass' Sign*, *The Atlantic* (July 2, 2022), <https://www.theatlantic.com/ideas/archive/2022/07/the-true-meaning-of-no-trespass/661471/> (on file with the *Columbia Law Review*) ("After Emancipation, every southern state enacted some type of law restricting access, outlawing hunting and fishing or grazing livestock on private land, in addition to the labor laws and vagrancy statutes that allowed courts to sentence to hard labor 'stubborn servants' and workers who did not accept customary wages.").

77. See Elizabeth Hinton, LeShae Henderson & Cindy Reed, *Vera Inst. of Just., An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System 2* (2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> [<https://perma.cc/54ZQ-S73G>] ("In the South, following Emancipation, black Americans were specific targets of unique forms of policing . . . Laws that capitalized on a loophole in the 13th Amendment that states citizens cannot be enslaved *unless* convicted of a crime intentionally targeted newly emancipated black people as a means of . . . exploiting their labor.").

78. See Royce, *supra* note 73, at 181–88. The Southern sharecropping or "cropper" system began as early as 1868, when planters began allocating small portions of their land to people fleeing from enslavement, who kept a portion of the crops as payment. *Id.* The arrangement developed largely due to a "constriction of possibilities." *Id.* Neither planters nor people fleeing from enslavement desired this outcome, but landowners could not establish a new labor force with immigrants and people fleeing from enslavement could not

sharecropping entrenched this power by tying formerly enslaved people to land they did not own and from which they could not easily escape.⁷⁹ Sharecropping preserved the economic asymmetry of slavery—labor extraction with minimal compensation—while avoiding the formalities of legal ownership. It sustained oligarchic dominance by keeping land concentrated,⁸⁰ restricting Black labor mobility,⁸¹ and reinforcing cultural narratives of racial hierarchy.⁸²

Although no longer slaves in name, Black sharecroppers lived under a regime that replicated slavery's core logic: concentrated wealth for an oligarchic class built on the systematic degradation of Black labor. Sharecropping exposed the limits of emancipation and the resilience of oligarchic control. While the Fourteenth Amendment promised equal protection, agricultural elites circumvented that promise by reimposing economic dependency and racial subjugation through ostensibly legal means.⁸³

Institutional power reinforced this arrangement. Legislatures controlled by former slaveholders enacted laws favoring landowners; courts interpreted contracts and debts to the detriment of Black tenants;⁸⁴ and law enforcement continued to impose racial hierarchy through violence and intimidation.⁸⁵ The agricultural oligarchy remained deeply woven into the legal and political fabric of the South.

acquire their own land. *Id.* Sharecropping increased the autonomy of people fleeing from enslavement, but it did not free them from planter control. *Id.*

79. See *id.* at 219 (noting that sharecropping left freedpeople in a “state of permanent indebtedness, restricting their mobility, adding to their economic dependence, and culminating in a system of debt peonage that persisted for decades”).

80. See *id.* at 109–18 (“Black landownership undermined labor discipline, jeopardized the future of the plantation system, and thus posed a threat to the fundamental interests of white landholders. Planters were determined, therefore, to prevent freedpeople from owning land.”).

81. See *id.* at 117–18 (“Most freedpeople were unable to establish an independent economic existence outside of the plantation system.”).

82. See *id.* at 164–66 (explaining the perspectives of some White people who saw continued economic dominance over people fleeing from enslavement as the duty of the “superior” race).

83. See Dwayne Fatherree, *Fighting to Grow: Black Farmers Continue to Battle Systemic Discrimination*, S. Poverty L. Ctr. (Feb. 18, 2022), <https://www.splcenter.org/news/2022/02/18/fighting-grow-black-farmers-continue-battle-systemic-discrimination> [<https://perma.cc/6VAH-R7Z6>] (discussing the various institutional barriers and instances of governmental discrimination that have hindered the success of Black farmers).

84. See Brittany Farr, *Breach by Violence: The Forgotten History of Sharecropper Litigation in the Post-Slavery South*, 69 *UCLA L. Rev.* 674, 724 (2022) (“Doctrine, procedure, and legal culture worked in tandem to create a system with steep odds for sharecropper and tenant plaintiffs.”).

85. See Robert J. Haws & Michael V. Namorato, *Race, Property Rights, and the Economic Consequences of Reconstruction: A Case Study*, 32 *Vand. L. Rev.* 305, 313 (1979) (“Local law enforcement officials were required to report the number of [underaged Black orphans] to the county probate court each January and June. The probate judge then apprenticed these [individuals] to ‘suitable and competent persons,’ [sic] with preference

Federal intervention during the New Deal did little to disrupt this structure and often fortified it. Policies such as the Agricultural Adjustment Act of 1933, while formally race-neutral, channeled subsidies to those who already controlled land, disproportionately benefiting White landowners.⁸⁶ Black farmers—particularly sharecroppers and tenant farmers—were either excluded from these benefits or displaced as landowners evicted them to capture federal payments.⁸⁷ The New Deal thus illustrates the oligarchy’s ability to reshape progressive reforms to reinforce its dominance.⁸⁸

The violence embedded in slavery, convict leasing, and sharecropping was not merely physical. It constituted a total assault on human dignity.⁸⁹ These systems taught Black agricultural workers that their pain was inconsequential, their labor disposable, and their lives subordinate, conditions that amount to systematic equality-based dignitary harms. The plantation was not only an economic engine but also a cultural and political order that normalized undignified existence and constrained the very meaning of citizenship.⁹⁰

given to the former owners of freedmen.” (quoting *An Act to Regulate the Relation of Master and Apprentice, as Relates to Freedmen, Free Negroes, and Mulattoes*, ch. 5, § 1, *Miss. Laws ch. 5* (1865) (misquotation)).

86. See, e.g., Pete Daniel, *Dispossession: Discrimination Against African American Farmers in the Age of Civil Rights* 258 (2013) [hereinafter Daniel, *Dispossession*] (noting that AAA county committees and office staff minded the interests of prosperous farmers); Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* 236 (1986) [hereinafter Wright, *Old South, New South*] (“The South was planter’s heaven by the late 1930s, with generous government subsidies, protection against risk, ready financing for new machinery, and cheap harvest labor to make it all possible.”).

87. See Wright, *Old South, New South*, *supra* note 86, at 227–28 (noting that the AAA relied heavily on existing agricultural extension services and local committees dominated by landlords, who received and distributed the checks themselves with “virtually no effective federal enforcement,” resulting in widespread reports of cheating, fraud, and illegal evictions).

88. See Pete Daniel, *African American Farmers and Civil Rights*, 73 *J.S. Hist.* 3, 6–7 (2007) [hereinafter Daniel, *Civil Rights*] (noting a U.S. Commission on Civil Rights report that discussed how various USDA programs resisted demands to share power with Black farmers).

89. See *Africans in America: Judgment Day*, at 39:20–43:06 (WGBH Educational Foundation 2017) (interview with Professor Deborah Gray White exploring the history of slavery in the United States, including the centrality of violence in maintaining control over enslaved people); see also Brad Evans, *Histories of Violence: Slavery in America*, *L.A. Rev. Books* (Dec. 23, 2019), <https://lareviewofbooks.org/article/histories-of-violence-slavery-in-america/> [<https://perma.cc/F4GL-QHBB>] (“[C]hattel slavery . . . made possible the ownership of men, women, and children. Conceived as commodities, they could be bought, sold, beaten, raped, killed, and discarded. Moreover, slave owners were entitled to control enslaved bodies through use of physical punishment and psychological abuse.”).

90. See Alexander Tsesis, *Enforcement of the Reconstruction Amendments*, 78 *Wash. & Lee L. Rev.* 849, 869 (2021) (describing how antebellum precedent influenced the structural vision of Reconstruction); see also Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* 128–45 (2018) (“For Baltimore’s free black community, no dimension of [*Dred Scott v. Sandford*, 60 U.S. 393 (1857),] was more salient

After slavery's formal abolition, Reconstruction-era leaders grappled with whether their mission extended beyond ending legal bondage to dismantling the oligarchic system that had sustained racial subordination.⁹¹ Many Radical Republicans understood that the plantation oligarchy posed a direct threat to equal protection by entrenching an agricultural system fundamentally at odds with democratic governance.⁹² Sharecropping, therefore, must be understood not as a transitional economic arrangement but as a systematic dignitary harm that continued to treat Black laborers as less than fully human. By denying economic independence, civic recognition, and opportunities for personal development, sharecropping entrenched precarity and social exclusion while maintaining a racialized agricultural underclass.⁹³

The discriminatory conditions of slavery, convict leasing, and sharecropping inflicted equality-based dignitary harms that legitimized myths of Black inferiority and obscured the role of oligarchic power in shaping agricultural markets.⁹⁴ Their enduring impact reveals that agricultural oligarchy has always been more than an economic system. It is a political formation that requires the ongoing subordination of Black farmers to maintain its material base and ideological legitimacy. From slavery to the New Deal, agricultural oligarchy adapted to new legal

than that which declared no black person—enslaved or free—was a citizen of the United States.”).

91. See, e.g., John M. Bickers, *The Power to Do What Manifestly Must Be Done: Congress, the Freedmen's Bureau, and Constitutional Imagination*, 12 *Roger Williams U. L. Rev.* 70, 95 (2006) (detailing the nationwide debate regarding the role of the Freedmen's Bureau in systemic reform and support for people fleeing from enslavement). See generally Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (Henry Steele Commager & Richard B. Morris eds., 1988) [hereinafter Foner, *Unfinished Revolution*] (providing a historical account of the vigorous debates on Black citizenship during Reconstruction).

92. See Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 *J. Am. Hist.* 863, 872 (1987) (“Achieving a measure of political power seemed indispensable to attaining the other goals of the black community, including access to the South's economic resources, equal treatment in the courts, and protection against violence.”).

93. See Wright, *Understanding Class*, *supra* note 62, at 6–8 (discussing the concept of “opportunity hoarding” by which economically privileged groups exclude other groups from accessing resources and opportunities that would allow them to advance within the class hierarchy); Jared Tetreau, *Sharecropping: Slavery Rerouted*, PBS (Aug. 16, 2023), <https://www.pbs.org/wgbh/americanexperience/features/harvest-sharecropping-slavery-rerouted/> [https://perma.cc/43K7-ARJG] (“The [sharecropping] system existed, in conjunction with other institutions, to exploit Black labor at a minimum ‘relative loss’ to white landowners while keeping the Black population underfoot.”).

94. See David Harvey, *A Brief History of Neoliberalism* 7 (2005) (“The assumption that individual freedoms are guaranteed by freedom of the market and of trade is a cardinal feature of neoliberal thinking, and it has long dominated the US stance towards the rest of the world.”); Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America xv–xx* (2010) (tracing how putatively “objective” data legitimated myths of Black inferiority).

regimes while consistently exploiting equality-based dignitary harms to preserve concentrated control.

C. *Expropriation and Liberty-Based Dignitary Harms*

The second dimension of structural extermination—expropriation—reveals how agricultural oligarchy has systematically inflicted liberty-based dignitary harms to maintain concentrated power. While exploitation denied Black farmers recognition as fully human, expropriation stripped them of the material foundations necessary for self-governance. Across historical periods, the agricultural oligarchy adapted its mechanisms of control, repeatedly mobilizing state power to transfer resources from Black farmers to White landowners while crafting ideological narratives that framed dispossession as the natural operation of markets.

The theoretical framework developed earlier conceptions of liberty-based dignitary harms as violations of the capacity to choose one's own ends and author one's own life.⁹⁵ In agriculture, these harms emerge through the systematic denial of access to land, credit, and markets—the core resources that make autonomous agricultural life possible.⁹⁶ Expropriation thus shows how agricultural oligarchy has been sustained not only through economic concentration but through the deliberate design of legal, political, and administrative institutions to prevent the rise of alternative agricultural models that might challenge oligarchic dominance.

During Reconstruction, Congress confronted a fundamental question: What would liberty mean for formerly enslaved Black laborers within an agricultural economy still governed by oligarchic power? The debate exposed competing conceptions of freedom that would shape agricultural policy for generations. Many lawmakers embraced a negative conception of liberty—freedom from the legal constraints of slavery and discriminatory laws.⁹⁷ Within this narrow vision, emancipation meant removing formal barriers rather than addressing the structural conditions necessary for meaningful autonomy.

95. See *supra* section I.A.1.

96. See Pamela Browning, Comm'n on C.R., ED-222-604, *The Decline of Black Farming in America* 96 (1982), <https://files.eric.ed.gov/fulltext/ED222604.pdf> [<https://perma.cc/B7BC-2KM4>] (“[B]ecause of their low incomes, limited off-farm employment, and small landholdings, it can be assumed that black farmers are disproportionately unable to obtain credit elsewhere.”); Megan Buechler, *The Never-Ending Drought for Black Farmers: The Lasting Effects of Pigford and the Continuance of USDA Discrimination*, 61 U. Louisville L. Rev. 223, 228 (2022) (“Black farmers additionally struggled to obtain credit, considered to be the lifeblood of farming and ranching . . .”).

97. See, e.g., Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* 237–38 (1995) (arguing that Republicans defined liberty primarily as freedom from slavery and discriminatory laws, rooted in the free labor ideology).

This conservative vision could not account for the realities of an agricultural system in which oligarchic control over land, credit, and markets remained intact. Could mere freedom from interference⁹⁸ secure equal human dignity for emancipated Black citizens when the agricultural political economy continued to be organized for their subordination?⁹⁹ As American philosopher James Griffin observed, “Liberty guarantees not the realization of one’s conception of a worthwhile life, but only its *pursuit*.”¹⁰⁰ That presumes, however, equal access to the material and social conditions that make pursuit possible. Black farmers were systematically denied those conditions through policies crafted to preserve oligarchic control. Exclusion from land ownership, capital access, and legal protections transformed liberty from a substantive guarantee into an empty abstraction while reifying White dominance.

Congressional efforts to define freedom through the Civil Rights Act of 1866 illustrated the limits of negative liberty within an oligarchic regime.¹⁰¹ The Act promised Black Americans “the same enumerated rights ‘as [are] enjoyed by white citizens.’”¹⁰² But by tying Black freedom to privileges White citizens had accumulated through centuries of racial domination, the statute reinscribed racial hierarchy into the meaning of citizenship itself. It not only failed to account for the historical theft that

98. See Maria Dimova-Cookson, *Defending Isaiah Berlin’s Distinctions Between Positive and Negative Freedoms*, in *Isaiah Berlin and the Politics of Freedom: “Two Concepts of Liberty” 50 Years Later* 73, 75 (Bruce Baum & Robert Nichols eds., 2013) (defining negative liberty as freedom from constraint or interference by other individuals or by the state); see also John Christman, *Freedom, Autonomy, and Social Selves*, in *Isaiah Berlin and the Politics of Freedom: “Two Concepts of Liberty” 50 Years Later*, supra, at 87, 87–88 (discussing the limits of negative liberty in the discussion of individual sovereignty, autonomy, and relational freedom); *Three Post-War Liberals Strove to Establish the Meaning of Freedom*, *The Economist* (Aug. 30, 2018), <https://www.economist.com/schools-brief/2018/08/30/three-post-war-liberals-strove-to-establish-the-meaning-of-freedom> (on file with the *Columbia Law Review*) (reflecting on different conceptions of liberalism in the context of modern politics).

99. As Isaiah Berlin framed the question, “It is important to discriminate between liberty and the conditions of its exercise. If a man is too poor or too ignorant or too feeble to make use of his legal rights, the liberty that these rights confer upon him is nothing to him, but it is not thereby annihilated.” Isaiah Berlin, *Introduction*, in *Liberty*, supra note 57, at 3, 45.

100. James Griffin, *On Human Rights* 160 (2008).

101. See Robert J. Kaczorowski, *The Enforcement Provisions of the Civil Rights Act of 1866: A Legislative History in Light of Runyon v. McCrary*, 98 *Yale L.J.* 565, 569–70 (1989) (“Although Republicans believed that an exact enumeration of the specific rights incident to the generic rights to life, liberty, and property was impossible, they did enumerate some of these specific rights in section one of the Civil Rights Act of 1866.” (footnote omitted)). See generally David Abraham, *Liberty Without Equality: The Property-Rights Connection in a “Negative Citizenship” Regime*, 21 *Law & Soc. Inquiry* 1, 7–9 (1996) (explaining that America’s property-based, negative-rights conception of liberty helped to naturalize inequality and shape White democratic individualism).

102. See Kaczorowski, supra note 101, at 573 (alteration in original) (quoting Civil Rights Act of 1866, ch. 31, 14 Stat. 27, 27).

had enabled White agricultural wealth but also erased the need for restitution. By privileging formal equality without altering the underlying distribution of land and capital, the Act left the oligarchic structure of agricultural power unchallenged.¹⁰³

Expropriation—the systematic theft of land, labor, and legal autonomy—thus provides an essential framework for understanding how agricultural oligarchy produced liberty-based dignitary harms. Drawing from Immanuel Kant’s view that human dignity lies in our capacity for self-determination,¹⁰⁴ expropriation constitutes not merely economic loss but a fundamental denial of authorship over one’s life. When legal and economic structures restrict Black farmers’ access to agricultural resources, they revive the core logic of slavery: reducing persons to instruments of profit while denying them the capacity for self-governance.¹⁰⁵

The tension between liberty and oligarchic control was visible even before emancipation. Revolutionary rhetoric celebrated the yeoman farmer as the backbone of American freedom, yet many Founding Fathers enslaved Black laborers and built agricultural wealth on coerced labor.¹⁰⁶ Their vision of rural liberty excluded those bound in servitude, embedding oligarchic control in the nation’s agrarian ideology from the outset. The new constitutional order, influenced by Enlightenment

103. See Foner, *Unfinished Revolution*, *supra* note 91, at 109–10 (discussing the implications of land redistribution after emancipation, particularly in terms of the threat Black economic independence posed to the Southern political economy).

104. See, e.g., Edward J. Eberle, *Dignity and Liberty: Constitutional Visions in Germany and the United States* 8, 10 n.1 (2002) (noting that U.S. constitutionalism is anchored in a liberty-based, negative-rights tradition); Gewirth, *supra* note 52, at 11 (explaining that human dignity, in the Kantian sense, rests on persons’ capacity to choose their own ends and act as self-determining agents). But see Jeremy Waldron, *Dignity, Rank, and Rights* 24–27 (Meir Dan-Cohen ed., 2012) (noting the complexities of Kantian dignity and its diverse interpretations).

105. See Immanuel Kant, *Grounding for the Metaphysics of Morals* 36 (James W. Ellington trans., Hackett Publ’g Co., 3d ed. 1993) (1785) (“Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means.”); see also Christoph Horn, *Absoluteness and Contingency. Kant’s Use of the Concept of Dignity*, *in Kant’s Concept of Dignity* 11, 26–27 (Yasushi Kato & Gerhard Schönrich eds., 2020) (explaining Kant’s view that one has a duty to acknowledge the dignity of humanity of all other human beings).

106. See, e.g., Thomas Jefferson, *Notes on the State of Virginia* 164–65 (William Peden ed., Univ. of N.C. Press 1982) (1785) (praising yeoman farmers as “the chosen people of God” while describing “the whole commerce” between the enslaver and the enslaved Black laborers as “unremitting despotism on the one part, and degrading submissions on the other”); Stephen E. Ambrose, *Founding Fathers and Slaveholders*, *Smithsonian Mag.* (Nov. 2002), <https://www.smithsonianmag.com/history/founding-fathers-and-slaveholders-72262393/> [<https://perma.cc/V22Y-V3DC>] (observing that many Founding Fathers were enslavers, despite knowing that “slavery was wrong” and that it was wrong to “profit[] from the institution”).

debates over freedom and collective welfare,¹⁰⁷ ultimately prioritized individual property rights over the material conditions necessary for meaningful freedom, enabling the persistence of racialized agricultural hierarchies.¹⁰⁸

This laissez-faire constitutional structure constrained political efforts to address the structural prerequisites for genuine autonomy—secure land tenure, access to capital, and fair market participation.¹⁰⁹ Oligarchic interests seized on this framework to depict inequality as the natural result of individual merit rather than a product of deliberate political choices. In so doing, policymakers cast expropriation as market efficiency, masking the extensive institutional scaffolding required to sustain concentrated agricultural power.

Not all Reconstruction policymakers accepted this narrow vision. A larger cohort of Radical Republicans articulated an alternative conception of liberty—what contemporary theorists describe as “non-domination.”¹¹⁰ This view recognized that newly emancipated Black communities could not realize freedom while remaining economically subordinate to the same landholding class that had enslaved them. The Bureau of Refugees, Freedmen, and Abandoned Lands (the Freedmen’s Bureau), established in 1865, embodied this richer understanding of liberty by acknowledging that liberty required affirmative intervention to dismantle structural inequality.¹¹¹

107. For works of political philosophy dealing with the tension that influenced the Founders’ efforts in drafting the Constitution, see generally Thomas Hobbes, *Leviathan*, or *The Matter, Forme, & Power of a Common-Wealth Ecclesiasticall and Civill* 113 (1651) (arguing that individuals surrender certain liberties to a sovereign authority in exchange for security and social order); John Locke, *Two Treatises of Government* 323–24 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690) (describing political society as formed to preserve natural rights, particularly property, through majority rule for the public good); Jean-Jacques Rousseau, *The Social Contract, or The Principles of Political Rights* 21–22, 43 (Rose M. Harrington trans., 1893) (1762) (contending that legitimate political authority derives from the general will oriented toward the common good rather than private interest). John Stuart Mill summarized the popular sentiment regarding individual freedom in 1859: “The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it.” John Stuart Mill, *On Liberty* 12 (Elizabeth Rapaport ed., Hackett Publ’g Co. 1978) (1859). For discussion of collective welfare, see Locke, *supra*, at 353, 363–64 (explaining the duty of government to legislate in favor of the common good).

108. See Mill, *supra* note 107, at 9 (“In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.”).

109. See Charles Taylor, *What’s Wrong With Negative Liberty*, in *2 Philosophy and the Human Sciences* 211, 213 (1985) (“[N]egative theories [of liberty] can rely simply on an opportunity-concept, where being free is a matter of what we can do, of what it is open to us to do, whether or not we do anything to exercise these options.”).

110. See, e.g., Philip Pettit, *Republicanism: A Theory of Freedom and Government* 51–79 (1997) (describing the concept of liberty as “non-domination”).

111. See *Freedmen’s Bureau Acts of 1865 and 1866*, U.S. Senate, <https://www.senate.gov/artandhistory/history/common/generic/FreedmensBureau.htm>

The Freedmen's Bureau represented a significant, though contested, federal effort to challenge agricultural oligarchy by providing the material foundations of autonomy: food, shelter, medical care, and access to land.¹¹² Its limited resources, fierce White resistance, and premature dissolution revealed both the transformative potential of federal intervention and the immense political power of the oligarchy determined to suppress it.¹¹³

The Bureau's brief existence illuminated the central tension in Reconstruction-era debates about agricultural liberty. Programs like the Bureau reflected recognition that liberty required material foundations—that formal legal equality was insufficient without addressing the structural conditions that enabled oligarchic domination. This understanding clashed with prevailing notions of White property rights, however, which prioritized restoring land to former Confederates over providing reparative justice to the formerly enslaved.¹¹⁴ The agricultural oligarchy successfully mobilized these property rights narratives to resist redistribution efforts that might have challenged concentrated agricultural power.

These tensions reached their height with Special Field Order No. 15, which sought to redistribute 400,000 acres of confiscated Confederate land to Black families in forty-acre parcels.¹¹⁵ The order constituted the most direct challenge to agricultural oligarchy during Reconstruction, offering Black communities the land base necessary for genuine autonomy. President Andrew Johnson's reversal—prompted by oligarchic pressure—demonstrated the enduring vitality of concentrated agricultural

[<https://perma.cc/8MK5-F4LQ>] (last visited October 8, 2025); see also Act of Mar. 3, 1865, ch. 90, § 1, 13 Stat. 507, 507–08 (establishing the Bureau of Refugees, Freedmen, and Abandoned Lands to supervise and manage matters relating to freedpeople and abandoned lands); Act of July 16, 1866, ch. 200, §§ 1–2, 14 Stat. 173, 173–74 (extending and reauthorizing the Bureau and expanding its authority to provide legal protection and relief to formerly enslaved persons).

112. See Donald G. Nieman, *To Set the Law in Motion: The Freedmen's Bureau and the Legal Rights of Blacks, 1865–1868*, at 64–65 (1979) (describing how Bureau agents tried to block contracts from replicating the conditions of slavery but failed to meaningfully change the contracted laborers' obligations from that of planters); Daniel Backman, "A Vast Labor Bureau": The Freedmen's Bureau and the Administration of Countervailing Black Labor Power, 40 *Yale J. on Regul.* 837, 850 (2023) (describing the "ardent political opposition" the Bureau faced from President Andrew Johnson and the Southern States). See generally Ira C. Colby, *The Freedmen's Bureau: From Social Welfare to Segregation*, 46 *Phylon* 219, 225 (1985) ("The Freedmen's Bureau implemented and coordinated four major programs throughout the reconstructed states: rations distribution, health care, educational programs, and a judicial system.").

113. See, e.g., Michael K. Brown, *Unjust Restitution: A Century of Black Struggle for Equality* 19 (2025) [hereinafter Brown, *Unjust Restitution*] (discussing Southern opposition to the Freedmen's Bureau and the threat the Bureau posed to the racial hierarchy).

114. See *id.* at 76 (noting Johnson's opposition to the Bureau and his order that land be returned to former Confederates).

115. Roy W. Copeland, *In the Beginning: Origins of African American Real Property Ownership in the United States*, 44 *J. Black Stud.* 646, 653 (2013).

power and its ability to weaponize state institutions to preserve land hierarchy.¹¹⁶ The betrayal demonstrated that legal emancipation alone could not dismantle oligarchic dominance when the oligarchy retained control over political institutions and cultural narratives on property rights.

The failure of land redistribution marked a turning point. As formal slavery ended, agricultural oligarchy developed new mechanisms of expropriation. While the Freedmen's Bureau initially encouraged Black Americans to enter labor contracts with White landowners,¹¹⁷ these arrangements quickly morphed into sharecropping and tenancy systems that functioned as sophisticated instruments of dispossession. Sharecropping and tenant farming preserved the oligarchy's access to labor, denied Black farmers the material conditions for autonomy, and maintained a facade of legal freedom.¹¹⁸

The scale of Black land dispossession over the "long twentieth century" reveals expropriation's enduring power. Enslaved people were barred from land ownership, permitted only small subsistence plots that reinforced their dependence on plantation owners.¹¹⁹ Under the Homestead Act of 1862, approximately 246 million acres of public land went to White settlers,¹²⁰ establishing massive racialized wealth gaps.¹²¹

116. See *id.* at 653 ("As a result of the President's Order, the federal government dispossessed tens of thousands of African American landholders. In Georgia and South Carolina, some Black[] [people] fought back, driving away former owners with guns, but only 2,000 African Americans retained land they had won and worked after the war." (citation omitted) (citing Claude F. Oubre, *Forty Acres and a Mule: The Freedmen's Bureau and Black Land Ownership* 45–51, 69–70 (1978)); *id.* at 657 ("The former plantation owners appealed to President Johnson who commanded Howard to notify Saxton that Circular 15 was applicable to the Sherman Reservation. In Edisto Island, South Carolina, Howard met with a group of freedmen to inform them that pursuant to President Johnson's orders that he had to restore the land.").

117. See *id.* at 657–60 ("As a condition . . . to restoration, the former owners were required to ensure that the freedmen would be able to harvest the crops grown in 1865 and make no claim to the proceeds themselves. Bureau agents attempted to negotiate the best terms possible for the freedmen with their former owners.").

118. See Pete Daniel, *The Metamorphosis of Slavery, 1865–1900*, 66 *J. Am. Hist.* 88, 91–92, 95 (1979) (explaining how Southern planters developed a system of labor that had a similar structure to slavery but still provided Black Americans with formal legal freedom).

119. Toussaint, *Abolition*, *supra* note 46, at 1065 ("North American planters frequently allowed their enslaved laborers to grow their own food in small plots, such as 'maize, potatoes, pumpkins, [and] water melons.' . . . [F]ood deprivation was intentionally leveraged as a means for the enslaver to enhance profits and diminish the dignity of the enslaved class" (first alteration in original) (quoting Gwyn Campbell, *Children and Slavery in the New World: A Review*, 27 *Slavery & Abolition* 261, 268 (2006))).

120. Andrew Muhammad, Christopher Sichko & Tore C. Olsson, *African Americans and Federal Land Policy: Exploring the Homestead Acts of 1862 and 1866*, 46 *Applied Econ. Persps. & Pol'y* 95, 97 (2024).

121. See Copeland, *supra* note 115, at 653 ("The Federal retreat from land redistribution was not only a disappointment that cultivated a sense of betrayal, it was also a missed opportunity for economic reform that might have allowed Southern Blacks to

Though the Southern Homestead Act of 1866 aimed to open more than forty-seven million acres to Black Americans in five Southern states,¹²² oligarchic control over local bureaucracy ensured that only 0.16% of eligible Black Southerners obtained titles.¹²³ Bureaucratic racism, violence, and widespread poverty among newly emancipated Black Americans—conditions directly created by the oligarchic system itself—kept most land out of Black hands.¹²⁴

Those few Black farmers who did acquire land faced structural disadvantages engineered to force abandonment: less fertile land, lack of credit, minimal infrastructure support, and racial terror.¹²⁵ Yet by 1910, Black farmers still managed to control between sixteen and nineteen million acres—nearly 17% of Southern farms.¹²⁶ This achievement occurred largely through the Second Morrill Act of 1890, which established separate agricultural education institutions for Black Americans.¹²⁷ This high-water mark was followed by precipitous decline as agricultural oligarchy recalibrated to changing political and economic landscape.

Over the next half-century, Black farmers lost roughly 90% of their land.¹²⁸ Various macroeconomic factors—falling cotton prices, boll weevil devastation, Great Depression dislocations, and technological changes—affected all farmers,¹²⁹ but Black farmers lost land at more than twice the

consolidate and hold political gains made during the early years of Reconstruction.” (citing Foner, *Unfinished Revolution*, supra note 91, at 246)).

122. See Paul Wallace Gates, *Federal Land Policy in the South 1866–1888*, 6 *J.S. Hist.* 303, 304 (1940) (noting that the Southern Homestead Act opened over forty-seven million acres of public land in five Southern states, framed as aid to freedpeople).

123. See Claude F. Oubre, *Forty Acres and a Mule: The Freedmen’s Bureau and Black Land Ownership* 188 (1978) (“Between 1866 and 1870 approximately 6,500 freedmen entered land; yet, probably less than 1,000 of these entrants received final certificates.”).

124. See Oubre, supra note 123, at 93 (noting, for example, that in South Carolina, “the bureau’s assistant commissioner took no action to encourage emigration to the homestead lands of other states” and “agents . . . completely ignored Howard’s directive to supply rations and transportation to homesteaders”).

125. Browning, supra note 96, at 19–20; see also Phyliss Craig-Taylor, *African-American Farmers and the Fight for Survival: The Continuing Examination for Insights Into the Historical Genesis of This Dilemma*, 26 *N.C. Cent. L. Rev.* 21, 29 (2003) (noting Black farmers were typically granted plots that were “small and typically of poor quality”); Daniel, *Civil Rights*, supra note 88, at 10–12, 45–48 (discussing White individuals’ use of violence, discrimination, and local control of credit markets to maintain dominance).

126. Angela P. Harris, *[Re]Integrating Spaces: The Color of Farming*, 2 *Savannah L. Rev.* 157, 179 (2015) [hereinafter Harris, *Color of Farming*].

127. Act of Aug. 30, 1890, ch. 841 § 1, 26 Stat. 417; see also Frederick S. Humphries, *1890 Land-Grant Institutions: Their Struggle for Survival and Equality*, 65 *Agric. Hist.* 3, 3–5 (1991) (noting that all but one out of seventeen states established state-supported land-grant colleges after the Act’s passage).

128. See Daniel, *Dispossession*, supra note 86, at 6.

129. See Browning, supra note 96, at 23–25, 38 (explaining how each of the four macroeconomic factors reduced the number of farmers and led them to take on new opportunities in the North); see also Janet K. Wadley & Everett S. Lee, *The Disappearance*

rate of White farmers.¹³⁰ This disparity reveals that broader economic forces were compounded by deliberate discrimination orchestrated by oligarchic interests.

Federal agencies played pivotal roles in this systematic expropriation. The USDA provided discriminatory access to loans, credit, insurance, and extension services, undermining Black farmers' ability to maintain and expand their holdings.¹³¹ The Farmers Home Administration (FmHA), created in 1946 to support struggling rural families, became a primary mechanism for transferring agricultural wealth from Black families to White landowners through systematic discrimination in loan provision and technical assistance.¹³²

The Farm Credit Act of 1971 illustrates how ostensibly race-neutral policies can entrench racialized dispossession.¹³³ By tying access to agricultural loans to collateral value and credit history—precisely the forms of capital that generations of exclusion had stripped from Black communities—the Act entrenched oligarchic power while maintaining a veneer of race neutrality.

The industrial transformation of American agriculture during the Green Revolution deepened these inequalities. High-cost farming equipment, high-yield seeds, and chemical inputs reshaped the industry in ways that excluded small-scale farmers without substantial capital.¹³⁴ Because Black farmers had long been deprived of financing, they were effectively shut out of modernization as large operations industrialized

of the Black Farmer, 35 *Phylon* 276, 279 (1974) (“During the early 1920’s, however, the boll weevil spread throughout the cotton states and the number of black farmers began a gradual decline.”).

130. See David Buland, USDA, NRCS Support of Hispanic Farmers: By the Numbers 2 & fig. 1 (2002) (unpublished manuscript), https://www.nrcs.usda.gov/Internet/FSEDOCUMENTS/nrcsl43_009843.pdf [<https://perma.cc/KY23-PKZP>]; see also *infra* section I.E.

131. See Daniel, *Dispossession*, *supra* note 86, at 2 (“[T]ens of thousands of black farmers lost their hold on the land . . . because they were denied loans, information, and access to [USDA] programs essential to survival in a capital-intensive farm structure.”); see also Greg A. Francis, *Just Harvest: The Story of How Black Farmers Won the Largest Civil Rights Case Against the U.S. Government* 17 (2021) (arguing that “[b]ribery, corruption, and racism” dominated the USDA).

132. See Browning, *supra* note 96, at 3–4, 9, 11 (describing how Black farmers experienced land loss as a result of discriminatory FmHA programs and developer appropriation).

133. See 12 U.S.C. §§ 2001–2279cc (2018) (establishing a system of cooperative institutions to provide credit and financial services to farmers, ranchers, and agricultural cooperatives).

134. See Philip M. Raup, *Corporate Farming in the United States*, 33 *J. Econ. Hist.* 274, 286 (1973) (“There are types of farming for which capital requirements and economies of size are often beyond the reach of single-proprietor or family-type farms It is likely that corporation farming activity will remain strong and even expand in these types of farming.”).

and consolidated.¹³⁵ This process exemplifies the “development of underdevelopment”¹³⁶—policies that engineered stagnation and dispossession in Black communities while enabling consolidation among White agribusinesses. The exchange value of Black-owned farmland diverged from its use value to Black communities,¹³⁷ and the social capital embedded in Black landownership—its role as a symbol of autonomy and post-emancipation self-determination—was systematically stripped away without acknowledgment or compensation.¹³⁸

These patterns of systematic expropriation reveal how agricultural oligarchy has maintained itself across different historical periods not through market efficiency but through the strategic manipulation of legal, political, and economic institutions. By monopolizing credit markets, capturing federal agencies, and shaping policy debates, oligarchic interests cast expropriation as natural economic development while obscuring its political construction.

The cumulative effect of this systematic expropriation constitutes a far-reaching pattern of liberty-based dignitary harms. By denying Black farmers access to land, capital, markets, and political representation, the oligarchy foreclosed the possibility of genuine self-governance.¹³⁹ This

135. See Daniel, *Dispossession*, supra note 86, at xii (“African American farmers . . . were often unable to obtain credit, the sine quo non for modern agriculture, even for spring planting, much less for buying tractors, picking machines, and chemicals, nor were they favored by USDA personnel or policies.”).

136. Andre Gunder Frank, *The Development of Underdevelopment*, 18 *Monthly Rev.* 17, 17 (1966) (presenting the argument that underdevelopment in some countries is not a natural or original condition but a result of their integration into the global capitalist system in a subordinate position).

137. See John Gowdy & Sabine O’Hara, *Economic Theory for Environmentalists* 9 (1995) (arguing that the neoclassical economic model collapses the social and ecological meanings of land into its market price by valuing it solely through exchange, thereby separating its exchange value from its community use value); Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 *Wis. L. Rev.* 557, 590 (discussing the “noneconomic value that property ownership may provide to black rural property owners”); see also John R. Logan & Harvey L. Molotch, *Urban Fortunes: The Political Economy of Place* 2 (1987) (“The pursuit of exchange values in the city does not *necessarily* result in the maximization of use values for others.”).

138. See Brown, *Unjust Restitution*, supra note 113, at 75 (discussing land ownership as the foundation for political and civil rights).

139. See Nancy Fraser, *Expropriation and Exploitation in Racialized Capitalism: A Reply to Michael Dawson*, 3 *Critical Hist. Stud.* 163, 166–73 (2016) (arguing that racialized expropriation confiscates land and labor from dependent subjects through political subjection, creating populations that are denied protection and autonomy while enabling capital accumulation); Robin D.G. Kelley, *The Rest of Us: Rethinking Settler and Native*, 69 *Am. Q.* 267, 267–76 (2017) (illustrating how White settlement in Africa operated by dispossessing Black communities of land and imposing coercive labor systems that destroyed stable forms of resistance and self-sufficiency); Anibal Quijano, *Coloniality of Power, Eurocentrism, and Latin America*, 1 *Nepantla* 533, 534–35 (2000) (arguing that colonization introduced the social reality of race and “race became the fundamental criterion for the distribution of the world population into ranks, places, and roles in the

pattern reveals that the oligarchy's power depends not merely on hoarding resources but on preventing the emergence of alternative agricultural futures that might threaten its dominance.

Understanding this history through the lens of liberty-based dignitary harms reveals how agricultural oligarchy has repeatedly adapted its methods while maintaining its essential structure: concentrated power sustained through the systematic denial of meaningful autonomy to marginalized communities. Dismantling agricultural oligarchy therefore requires more than policy reform; it demands a restructuring of the institutional arrangements that translate economic concentration into political domination over agricultural life.

D. *Erasure and Integrity-Based Dignitary Harms*

The third dimension of structural extermination—erasure—operates through integrity-based dignitary harms that deny Black farmers full social and political recognition. Building on exploitation, which undermines their equal humanity, and expropriation, which strips material autonomy, erasure reflects the oligarchy's most sophisticated tool of control: manipulating institutional memory, public discourse, and democratic representation to render Black agricultural struggles invisible while naturalizing concentrated power.

This section traces how agricultural oligarchy has used federal institutions to erase Black farmers both materially—from land, credit, and policymaking—and symbolically, from national narratives of agricultural development. Erasure functions not as mere administrative neglect but as a deliberate strategy of oligarchic consolidation, requiring ongoing institutional capture to remain effective across shifting political environments.

1. *Institutional Capture and the Failure of Civil Rights Reform.* — The Civil Rights Movement created unprecedented opportunities to challenge agricultural oligarchy. The Civil Rights Act of 1964 banned racial discrimination in USDA loan programs and established an administrative complaint process through the Office of Civil Rights Enforcement and Adjudication (OCREA).¹⁴⁰ Black farmers could file complaints and, when administrative remedies failed, seek judicial review under the Equal Credit

new society's structure of power"); Andrea Smith, *Indigeneity, Settler Colonialism, and White Supremacy*, in *Racial Formation in the Twenty-First Century* 66, 66–90 (Daniel Martinez HoSang, Oneka LaBennett & Laura Pulido eds., 2012) (“To keep this capitalist system in place, the logic of slavery applies a racial hierarchy to this system.”); Nancy Fraser, *Is Capitalism Necessarily Racist?*, *Pol./Letters* (May 20, 2019), <http://quarterly.politicsslashletters.org/is-capitalism-necessarily-racist/> (on file with the *Columbia Law Review*) (“What distinguishes free subjects of exploitation from dependent subjects of expropriation is the mark of ‘race’ as a sign of violability.” (emphasis omitted)).

140. 29 Fed. Reg. 16,966 (Dec. 7, 1964) (promulgating 7 C.F.R. §§ 15.51–52); see also *Pigford v. Glickman*, 185 F.R.D. 82, 88 (D.D.C. 1999).

Opportunity Act.¹⁴¹ These reforms appeared to offer meaningful pathways to dismantle oligarchic control over agricultural resources.

Yet the oligarchy quickly adapted, capturing these mechanisms to reinforce rather than disrupt concentrated power. Despite formal prohibitions against discrimination, the USDA's decentralized structure vested significant discretion in local officials—many aligned with entrenched oligarchic networks—who perpetuated discriminatory practices under the guise of administrative judgement. This pattern reveals a core feature of oligarchic governance: Democratic institutions can persist in form while their democratic substance is hollowed out through elite capture of implementation mechanisms.

The 1965 U.S. Commission on Civil Rights found that the FmHA routinely provided inferior loans and technical assistance to Black farmers compared to similarly situated White farmers.¹⁴² By 1970, the Commission had documented chronic delays and denials in credit access for essential agricultural inputs.¹⁴³ Discrimination persisted not through overt racial exclusion, now legally impermissible, but through bureaucratic manipulation that preserved existing hierarchies under a veneer of compliance.

The persistence of discrimination despite legal reform reflects what this Essay identifies as the oligarchy's institutional capture strategy. Rather than opposing civil rights reforms directly, oligarchic interests ensured that implementation would be administered by the same networks that had long enforced explicit exclusion. The decentralized county committee structure proved crucial: It delegated immense discretion to local offices, which operated without uniform eligibility standards.¹⁴⁴ By

141. See *Pigford*, 185 F.R.D. at 86 (“The plaintiffs in this case allege . . . that the [USDA] willfully discriminated against them and other similarly situated African American farmers [and] . . . both sides agree that this case essentially is brought under the Equal Credit Opportunity Act . . .”).

142. See U.S. Comm’n on C.R., ED 068-206, *Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture 107–11* (1965) [hereinafter U.S. Comm’n on C.R., 1965 Report] (explaining that federal agricultural programs reinforced racial hierarchies by systematically excluding Black farmers from local decisionmaking, providing inferior services, and administering segregated credit, conservation, and extension systems that accelerated the economic displacement of Black agricultural communities).

143. See Browning, *supra* note 96, at 5 (explaining that the Commission found the USDA and FmHA had failed to prioritize the crisis facing Black farmers, neglected civil rights enforcement, and, in some cases, actively hindered efforts by small Black farm operators to remain viable through unequal credit access and administrative neglect); Daniel, *Dispossession*, *supra* note 86, at 209–13 (“In 1974, the U.S. Commission on Civil Rights compiled a massive study of civil rights enforcement and chronicled in detail Extension Service obstinacy, evasions, and shortcomings.”).

144. Browning, *supra* note 96, at 79–82 (“FmHA lacks specific criteria for approving loans; consequently decisions made by local FmHA county supervisors . . . are somewhat subjective and result in applicants not being treated fairly and consistently . . .” (second alteration in original) (internal quotation marks omitted) (quoting U.S. Comptroller Gen.,

1980, only 4.3% of FmHA county committee members were Black,¹⁴⁵ demonstrating how administrative design can systematically exclude the very communities that civil right reforms purported to protect.

This exclusion did not simply reflect institutional trends or bureaucratic inertia. It revealed the fundamentally oligarchic character of American agricultural governance. Public institutions served the consolidation of elite power, not the public good. As political economist Thomas Ferguson has shown, policy in oligarchic systems reflects the interests of organized capital, especially when regulation is executed through captured agencies that obscure the exercise of power.¹⁴⁶

The agricultural oligarchy's capacity for adaptation became even more evident during the Reagan Administration, which aggressively dismantled civil rights enforcement. In 1980 alone, Black farmers filed eighty-five civil rights complaints documenting misconduct,¹⁴⁷ including discriminatory appraisals, loan delays, coercive terms, and stark disparities in loan size and frequency.¹⁴⁸ Rather than strengthening oversight, the Administration eliminated it. In 1983, President Reagan disbanded OCREA entirely, abandoning unresolved complaints.¹⁴⁹ According to documented reports, USDA staff members discarded civil rights complaints without review, literally throwing away evidence of discrimination.¹⁵⁰ This institutional vandalism was not mere administrative negligence but deliberate erasure designed to eliminate the documentary record of discrimination to prevent future challenges to oligarchic control.

The Reagan era illustrates how oligarchic systems shift strategies as political conditions change. In the Civil Rights era, the oligarchy maintained substantive discrimination under formally nondiscriminatory

CED-78-21, Stronger Federal Enforcements Needed to Uphold Fair Housing Laws 30 (1978)).

145. See Daniel, *Dispossession*, supra note 86, at 247.

146. See Thomas Ferguson, *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems* 9–10 (1995) (“It was high time . . . to spell out precisely what was wrong with the celebrated ‘median voter’ approach to electoral democracy and to put forward a clear alternative, in which . . . competition between blocs of major investors drives the system.”).

147. See Browning, supra note 96, at 84–85.

148. See *id.* at 76–87 (explaining that the Commission found a consistent pattern of discriminatory treatment in FmHA programs, in which Black farmers faced delays, inadequate assistance, and unequal loan opportunities that undermined their ability to sustain their farms); Buechler, supra note 96, at 230 (“After an investigation into an FmHA office conducted by the USDA’s Office of Equal Opportunity, multiple equal opportunity violations were found . . .”).

149. See Buechler, supra note 96, at 230 (noting that “the OCREA . . . was essentially dismantled in 1983, and complaints that had been filed were never processed, investigated, or forwarded to the appropriate agencies for conciliation” (citing *Pigford v. Glickman*, 185 F.R.D. 82, 88 (D.D.C. 1999))).

150. *Pigford*, 185 F.R.D. at 88.

rules.¹⁵¹ In the 1980s, it used neoliberal rhetoric about deregulation and efficiency to justify eliminating civil rights oversight altogether.¹⁵² This rhetoric transformed oligarchic self-interest into principled opposition to government interference, recasting captured governance as liberation from bureaucracy. The 1980s farm crisis further shielded oligarchic consolidation,¹⁵³ as federal relief overwhelmingly flowed to large, White-owned operations while small farms—particularly Black-owned farms—received little assistance.¹⁵⁴

In 1995, President Bill Clinton merged the FmHA into the new Farm Service Agency,¹⁵⁵ issued a temporary foreclosure moratorium, and formed a USDA Civil Rights Task Force.¹⁵⁶ Secretary of Agriculture Dan Glickman acknowledged the Department’s discriminatory history and endorsed ninety-two reforms, yet none addressed past harms.¹⁵⁷ The Federal Agriculture Improvement and Reform Act of 1996 represented the culmination of this oligarchic adaptation, completing the

151. Cf. Cristina Isabel Ceballos, David Freeman Engstrom & Daniel E. Ho, *Disparate Limbo: How Administrative Law Erased Antidiscrimination*, 131 *Yale L.J.* 370, 460–73 (2021) (arguing that faulty statutory interpretation developed a body of administrative law that is formally yet not substantively nondiscriminatory in the years and decades immediately following the civil rights movement); Sara R. Jordan & Phillip W. Gray, *American Bureaucracy in an Age of Oligarchy*, 32 *Int’l J. Pol. Culture & Soc’y* 279 (2019) (exploring the challenges that institutions of bureaucratic control face from oligarchic wealth distribution and outlining the channels through which the wealthy can achieve policy goals).

152. See, e.g., Drew S. Days III, *Turning Back the Clock: The Reagan Administration and Civil Rights*, 19 *Harv. C.R.-C.L. L. Rev.* 309, 309 (1984) (“[T]he Reagan Administration has inadequately enforced and otherwise undermined, if not violated outright, settled law in the field of civil rights.”).

153. See Paul Lasley & David Ostendorf, *The Unraveling of Agrarian America: A Retrospective on the 1980s*, 96 *Agri. Hist.* 553, 561 (2022) (noting that the farm crisis “provide[d] new opportunities for others, accelerating class divisions between those losing their land and livelihoods and those profiting from others’ miseries”).

154. See *One Million Black Families in the South Have Lost Their Farms Over the Past Century*, Equal Just. Initiative (Oct. 11, 2019), <https://eji.org/news/one-million-black-families-have-lost-their-farms/> [<https://perma.cc/FMA2-4WFG>] (“In 1984 and 1985, at the height of the farm crisis, the USDA lent a total of \$1.3 billion to nearly 16,000 farmers to help them maintain their land. Only 209 of those farmers were Black.” (internal quotation marks omitted) (quoting Habiba Alcindor, *Losing Ground*, *The Nation* (Mar. 20, 2005), <https://www.thenation.com/article/archive/losing-ground/> [<https://perma.cc/9TFK-BL4L>])).

155. James Chen, *Farmers Home Administration (FmHA): Meaning, History, Examples*, Investopedia, <https://www.investopedia.com/terms/f/farmers-home-administration-fmha.asp> (on file with the *Columbia Law Review*) (last updated Oct. 11, 2021).

156. Tadlock Cowan & Jody Feder, Cong. Rsch. Serv., RS20430, *The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers 2* (2013), <https://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf> [<https://perma.cc/ALX2-FF3H>].

157. USDA, *Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team 58–92* (1997), <https://acresofancestry.org/wp-content/uploads/2021/01/CRAT-Report.pdf> [<https://perma.cc/2TPQ-GWPF>].

transformation from state-managed discrimination to market-mediated concentration.¹⁵⁸ Marketed as freeing farmers from government interference, the Act accelerated corporate consolidation, deregulated agricultural markets, and converted subsidies to direct payments.¹⁵⁹ Within years, a handful of corporations controlled key supply chains like meat processing and grain trading, leaving small farmers increasingly subject to predatory market forces.¹⁶⁰

This evolution demonstrates how agricultural oligarchy has moved from plantation regimes to corporate agribusiness dominance while maintaining its essential character: concentrated power sustained through the exclusion of marginalized communities. The neoliberal rhetoric of market freedom obscured how deregulation intensified oligarchic control by removing the last institutional constraints on concentrated economic power.

2. *The Politics of Recognition and Contemporary Erasure.* — The *Pigford* litigation, filed in 1997, marked both a breakthrough and a limit in what political theorist Charles Taylor terms “the politics of recognition.”¹⁶¹ Timothy Pigford and a class of Black farmers alleged decades of racial discrimination by the USDA.¹⁶² The resulting settlement became the largest civil rights settlement in U.S. history, formally acknowledging the systematic discrimination that had decimated Black farming communities.¹⁶³

Critical analysis of recognition politics reveals significant limitations in addressing structural oligarchy. While Taylor argues that recognition is essential to democratic legitimacy because citizens require social esteem

158. See Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, § 101(b), 110 Stat. 888, 896.

159. See, e.g., Jon Lauck, *After Deregulation: Constructing Agricultural Policy in the Age of “Freedom to Farm”*, 5 *Drake J. Agric. L.* 3, 51 (2000) (finding that subsidy decoupling and increased market flexibility contributed to consolidation in farm operations); see also Traci Bruckner, *Agricultural Subsidies and Farm Consolidation*, 75 *Am. J. Econ. & Socio.* 623, 630–33 (2016) (arguing that deregulation under the 1996 Act and subsequent bills removed production controls and opened the path for larger-scale farming).

160. See Lauck, *supra* note 159, at 51; see also C. Edwin Young & Paul C. Westcott, USDA, *Agric. Info. Bull. No. 726, The 1996 Act Increases Market Orientation* (1996) (noting that the 1996 Act “increases farmers’ planting flexibility by eliminating ARP’s, base acreage planting constraints, and limits on normal and optional flex acreage,” thereby making planting and production decisions more fully responsive to market signals).

161. See Taylor, *Politics of Recognition*, *supra* note 52, at 30. Social recognition, Hegel argued, is foundational to the human condition. See Robert R. Williams, *Hegel’s Ethics of Recognition* 9–10 (1997) (“Recognition is the existential genesis of the concept of spirit, and remains *aufgehoben* in spirit.”); cf. Paul Ricoeur, *The Course of Recognition* 17, 19 (David Pellauer trans., Harvard Univ. Press 2005) (2004) (identifying Hegel’s *Anerkennung* as one of three approaches to the philosophy of recognition).

162. *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999).

163. *Id.* at 112 (“As a group, they brought Secretary Glickman to the negotiating table in this case and achieved the largest civil rights settlement in history.”).

to participate as full community members,¹⁶⁴ critics, like American philosopher Nancy Fraser, contend that recognition alone cannot remedy material inequalities that generate and sustain patterns of misrecognition.¹⁶⁵ *Pigford* exemplifies this tension: It provided monetary compensation and symbolic acknowledgment of past harms but left intact the structural conditions that had produced discrimination.

Drawing on philosopher Axel Honneth's theory of recognition, one might understand these dynamics as social pathologies that normalize domination by treating structural harms as episodic misconduct.¹⁶⁶ By framing agricultural discrimination as a series of discrete violations rather than the systematic operation of oligarchic power, the *Pigford* framework enabled the agricultural oligarchy to present itself as reformed while maintaining its essential control over land, credit, and policymaking institutions.¹⁶⁷ Fraser's redistributive critique is particularly relevant to agricultural oligarchy, which operates through control over material resources rather than mere cultural representation.¹⁶⁸ *Pigford* could not restore the millions of acres lost through a century of discriminatory credit practices, nor did it challenge accelerating agricultural consolidation that marginalized small and Black farmers.

By the time of the *Pigford* settlement, structural extermination had produced its intended outcome: Black farmers comprised less than 2% of U.S. farmers, representing a 98% decline from Reconstruction-era

164. See Taylor, *Politics of Recognition*, supra note 52, at 45. See generally Claire Dupuy & Samuel Defacqz, *Citizens and the Legitimacy Outcomes of Collaborative Governance: An Administrative Burden Perspective*, 24 *Pub. Mgmt. Rev.* 752 (2022) (explaining that, following Taylor, democratic legitimacy depends on recognition, which affirms citizens as full and socially esteemed members of the political community).

165. Nancy Fraser, *From Redistribution to Recognition? Dilemmas of Justice in a "Post-Socialist" Age*, in *The New Social Theory Reader* 188, 191–93 (Steven Seidman & Jeffrey C. Alexander eds., 2d ed. 2008) [hereinafter Fraser, *From Redistribution to Recognition*].

166. See Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* 174–77 (Joel Anderson trans., 1995).

167. See Buechler, supra note 96, at 227 ("Discrimination by the USDA in connection with farm loans and other credit or benefit programs made it incredibly difficult for black farmers to gain access to land, credit, or assistance programs."); Jyotsna Ghimire, Cesar L. Escalante, Ramesh Ghimire & Charles B. Dodson, *Do Farm Service Agency Borrowers' Double Minority Labels Lead to More Unfavorable Loan Packaging Terms?*, 80 *Agric. Fin. Rev.* 633, 638–39 (2020) (finding that, compared to White borrowers, Black borrowers received significantly lower loan amounts, significantly higher interest rates, and significantly shorter loan maturities); Ximena Bustillo, *'Rampant Issues': Black Farmers Are Still Left Out at USDA*, *Politico* (July 5, 2021), <https://www.politico.com/news/2021/07/05/black-farmers-left-out-usda-497876> (on file with the *Columbia Law Review*) ("The [*Pigford*] settlement fell short of addressing the problems resulting from the discriminatory lending, advocates contend . . . Black farmers say their interactions with FSA officials . . . are plagued by racial bias, inexperienced personnel and lack of bandwidth to help with applications.").

168. See Fraser, *From Redistribution to Recognition*, supra note 165, at 190–91 (illustrating the contradiction inherent in requiring recognition and redistribution, wherein a class must both affirm and deny its specificity).

levels.¹⁶⁹ Even during recent crises like the COVID-19 pandemic, racial disparities in agricultural policy remain stark. In 2020, Black farmers received less than 4% of the \$9.2 billion distributed through the Coronavirus Food Assistance Program, despite equal or greater need.¹⁷⁰

These patterns reflect what political scientists Steven Levitsky and Lucan A. Way describe as “competitive authoritarianism”—maintaining formal democratic institutions while systematically undermining their democratic substance.¹⁷¹ The agricultural oligarchy no longer needs explicitly discriminatory policies when decades of systematic exclusion have produced market conditions that reproduce racial disparities while providing plausible deniability about discriminatory intent.

Fourth-generation farmer Lucious Abrams captures this lived reality: “They didn’t have any idea we gonna be here twenty years later standing, fighting . . . but through His grace and mercy we’re still here, fighting for justice.”¹⁷² His words reveal both the resilience of Black farmers and the depth of the structures arrayed against them.

The systematic erasure of Black farmers constitutes integrity-based dignitary harms—violations of the capacity for social recognition as full members of the political community. Drawing from Taylor while incorporating Fraser’s materialist critique, this Essay finds that these harms arise when groups are denied both internal self-worth and external validation within public institutions necessary for complete citizenship.¹⁷³

169. See Buechler, *supra* note 96, at 242; see also *id.* at 226 (“[T]he number of black farmers has continuously declined—between 1920 and 1969, there was a 90% decrease, and a 98% decrease by 1997 [N]o other minority group has experienced a loss of farm operations at a rate comparable to that of the African American population.” (citing Harris, *Color of Farming*, *supra* note 126, at 179); Buland, *supra* note 130, at 4 fig. 3).

170. Jared Hayes, *USDA Data: Nearly All Pandemic Bailout Funds Went to White Farmers*, *Env’t Working Grp.* (Feb. 18, 2021), <https://www.ewg.org/news-insights/news/usda-data-nearly-all-pandemic-bailout-funds-went-white-farmers> [https://perma.cc/JUK7-DXTE] [hereinafter Hayes, *Pandemic Bailout Funds*] (“White farmers received nearly 97 percent of the \$9.2 billion provided by October 2020 through USDA’s Coronavirus Food Assistance Program The disparity . . . reflects both the design of the CFAP program—which linked payment to production—and the long history of discrimination by USDA”).

171. Steven Levitsky & Lucan A. Way, *Elections Without Democracy: The Rise of Competitive Authoritarianism*, 13 *J. Democracy* 51, 52–54 (2002) (defining competitive authoritarianism as a diminished form of authoritarianism in which both the government and opposition systematically violate the rules of formal democratic institutions).

172. *Acres of Ancestry Initiative - Black Agrarian Fund, Episode 17 | The Conspiracy Against Black Farmers | Lucious Abrams* [sic], at 04:08–04:19 (YouTube, May 14, 2020), <https://www.youtube.com/watch?v=5ivoK49-eqM> (on file with the *Columbia Law Review*).

173. See Fraser, *From Redistribution to Recognition*, *supra* note 165, at 189 (describing cultural and/or symbolic injustice as a process defined by social patterns of nonrecognition and disrespect); Taylor, *Politics of Recognition*, *supra* note 52, at 36 (“The projection of an inferior or demeaning image on another can actually distort and oppress, to the extent that the image is internalized [R]ace relations and discussions of multiculturalism are undergirded by the premise that the withholding of recognition can be a form of oppression.”).

But recognition operates differently in oligarchic systems. While democratic theory assumes that recognition emerges from inclusive deliberation,¹⁷⁴ oligarchy ensures that marginalized voices are excluded from the very forums that generate recognition.¹⁷⁵ The result is what this Essay terms “oligarchic recognition”—symbolic acknowledgment that legitimates concentrated power rather than challenging it.

This dynamic is evident in the constitutional dimensions of erasure. Black farmers are excluded not by formal disenfranchisement but through institutional structures—county committees dominated by White landowners,¹⁷⁶ extension services oriented toward large-scale operations,¹⁷⁷ policy research funded by agribusiness¹⁷⁸—that appear democratic while excluding marginalized voices.

This exclusion denies equal citizenship by reducing affected groups to subjects rather than participants in governance—a condition fundamentally incompatible with democratic constitutionalism.¹⁷⁹

The cumulative effect across generations is profound. Erasure has eliminated Black farmers’ collective voice from agricultural policymaking, rural development debates, and food system governance. This impoverishes democratic deliberation while enabling oligarchic interests to frame their preferences as universal agricultural needs. Erasure thus represents agricultural oligarchy’s most sophisticated strategy for maintaining power: the systematic elimination of alternative visions before they can challenge concentrated power. Unlike exploitation, which requires active domination, or expropriation, which requires systematic dispossession, erasure operates through institutional manipulation that renders alternative futures unthinkable within dominant policy frameworks.

174. See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* 496 (William Rehg trans., 1996) (“Each and every person should receive a three-fold recognition: they should receive equal protection and equal respect in their integrity as irreplaceable individuals, as members of ethnic or cultural groups, and as citizens, that is, as members of the political community.”).

175. See Taylor, *Politics of Recognition*, *supra* note 52, at 37–42 (describing how the “modern notion of identity” has given rise to a politics of difference, which has led to both discrimination and reverse discrimination against marginalized groups); see also Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*, 25/26 *Soc. Text* 56, 66 (1990) (“[I]n [societies whose basic institutional framework generates unequal social groups] . . . full parity of participation in public debate and deliberation is not within the reach of possibility.”).

176. See *supra* notes 144–145 and accompanying text.

177. See *supra* note 131 and accompanying text.

178. See *supra* note 23 and accompanying text.

179. See Mark Bovens, *Public Accountability*, in *The Oxford Handbook of Public Management* 182, 182–83 (Ewan Ferlie, Laurence E. Lynn & Christopher Pollitt eds., 2007) (describing public accountability as the “hallmark of modern democratic governance” and “a symbol for good governance”).

By controlling access to institutions, suppressing the documentary record, and shaping national narratives, the oligarchy presents its dominance as natural rather than constructed. These ideological conditions prevent coalition building and entrench concentrated power as common sense rather than a political choice. Integrity-based dignitary harms therefore preserve not only exclusion but ideological dominance. Understanding erasure as a deliberate oligarchic strategy rather than bureaucratic is essential for developing tools to challenge agricultural concentration and restore democratic governance.

E. *From Oligarchic Control to Democratic Transformation*

Together, the three dimensions of structural extermination—exploitation, expropriation, and erasure—reveal how agricultural policy has long functioned as an engine of White supremacy and anti-Blackness, extending back to the colonial origins of American society.¹⁸⁰ Viewed through the lens of agricultural oligarchy, these histories illustrate how concentrated economic power has been systematically deployed to maintain racial hierarchy and exclude Black farmers from meaningful participation in American agriculture.

American agriculture's oligarchic structure constitutes a direct challenge to democratic governance. By inflicting equality-based, liberty-based, and integrity-based dignitary harms on Black farmers, the system has preserved the essential character of the plantation economy while adapting its methods across eras. From slavery to state-managed discrimination to corporate domination, the oligarchy's capacity to capture democratic institutions allows it to convert civil rights reforms into mechanisms of legitimation, preserving substantive inequality beneath procedural compliance. The concept of "oligarchic recognition" explains how contemporary systems maintain ideological dominance through symbolic acknowledgment without structural redistribution. The *Pigford* settlement exemplifies this pattern: It offered formal acknowledgment of past harms and individual monetary compensation while leaving intact oligarchic control over land, credit, and policy institutions.¹⁸¹

Thus, the marginalization of Black farmers cannot be understood as discrete policy failures or market byproducts. Rather, it reflects the stable operation of an oligarchic system that preserves concentrated power by combining exploitation, expropriation, and erasure. Oligarchic control extends beyond economic resources to encompass the very frameworks

180. See W.E.B. Du Bois, *The African Roots of War*, *Atl. Monthly* (May 1915), <https://www.theatlantic.com/magazine/archive/1915/05/the-african-roots-of-war/528897/> (on file with the *Columbia Law Review*) ("[The slave trade], on which the British Empire and the American Republic were largely built . . . 'Color' became in the world's thought synonymous with inferiority, 'Negro' lost its capitalization, and Africa was another name for bestiality and barbarism.").

181. See *supra* notes 161–170 and accompanying text.

through which agricultural development is interpreted, making concentration appear inevitable.

The constitutional implications are profound. When public institutions consistently fail to represent marginalized communities—when county committees, extension services, and agricultural research centers serve oligarchic rather than democratic purposes—those communities are reduced to subjects rather than full citizens. Recognizing American agriculture as an oligarchic system makes clear that dismantling concentration requires more than policy reform. It demands structural change to the institutional arrangements that allow economic power to translate into political domination. Understanding integrity-based dignitary harms as products of deliberate oligarchic strategy provides the analytical foundation for reclaiming democratic governance in American agriculture.

II. LEGISLATIVE EFFORTS TO ADDRESS RACIAL INJUSTICE IN AGRICULTURE

The fight for racial justice in American agriculture is as old as the nation's farming economy itself. For generations, Black farmers have endured systemic discrimination that has stripped away land, livelihoods, and the intergenerational wealth such land might have secured. This Part examines the legal and legislative efforts to redress those harms, not as historical artifacts, but as windows into the evolving struggle for equity in American agriculture.

This analysis proceeds chronologically through three phases of reform. Section II.A begins with *Pigford v. Glickman*, which produced what was then the largest civil rights settlement in U.S. history, yet whose aftermath revealed the limits of legal redress within a bureaucratic system marked by distrust, delay, and uneven implementation. Section II.B explores more recent legislative efforts, including the proposed Justice for Black Farmers Act of 2020 and the debt relief program enacted under the American Rescue Plan Act of 2021, which reflect renewed attempts to confront structural inequality in agriculture. Finally, section II.C examines the political and legal resistance these initiatives have faced, including the fierce opposition that ultimately led to the repeal of race-conscious debt relief programs.

Taken together, these developments illuminate both the measurable progress and the persistent barriers that endure. They illustrate how law can serve as a tool for justice while remaining constrained by the very institutions tasked with enforcing it. The mixed reception of these reforms underscores a deeper national ambivalence toward race-conscious remedies and highlights how attempts to advance agricultural equity remain vulnerable to political backlash rooted in the oligarchic structures that have defined American agriculture since its plantation-era origins.

A. *The Pigford Cases*

The decades of racial discrimination against Black farmers that culminated in *Pigford v. Glickman* were neither isolated nor undocumented. Between 1965 and 1997, multiple government reports acknowledged pervasive discrimination in USDA lending programs, particularly those intended to support farmers.¹⁸² These reports repeatedly called for reforms, yet the Agency failed to take meaningful action. The USDA's sustained inaction, despite ample evidence and internal acknowledgment of wrongdoing, left Black farmers with few avenues for redress and reflected a deeper bureaucratic indifference to their plight.¹⁸³

In August 1997, Timothy Pigford filed a class-action lawsuit in the U.S. District Court for the District of Columbia on behalf of 641 Black farmers seeking redress for racial discrimination in the administration of federal farm programs.¹⁸⁴ The plaintiffs alleged that the USDA had functioned, in their words, as “a racist plantation, disguised as a government agency,” perpetuating racial subordination through its denial of loans and services.¹⁸⁵ Their claims traced a lineage of discrimination stretching back to the post-Civil War era, framing the suit not only as a legal challenge but as a moral indictment of federal agricultural governance.

The resulting 1999 consent decree created two avenues for relief. Track A offered a \$50,000 payment, loan forgiveness, and tax offsets for claimants able to present substantial evidence of discrimination through a relatively streamlined process.¹⁸⁶ Track B allowed for potentially greater compensation but required claimants to meet a higher evidentiary standard—proof of discrimination and damages by a preponderance of

182. See U.S. Comm'n on C.R., 1965 Report, *supra* note 142; U.S. Comm'n on C.R., Federal Civil Rights Enforcement Effort (1970); Browning, *supra* note 96 (noting that loan programs designed to support low-income farmers paradoxically discriminated against Black farmers); C.R. Action Team, Civil Rights at the United States Department of Agriculture (1997) [hereinafter C.R. Action Team, 1997 Report]; Cowan & Feder, *supra* note 156, at 2 (“[F]indings showed that . . . the largest USDA loans (top 1%) went to corporations (65%) and white male farmers (25%); . . . loans to black males averaged \$4,000 (or 25%) less than those given to white males; and . . . 97% of disaster payments went to white farmers, while less than 1% went to black farmers.”).

183. See, e.g., Kristol Bradley Ginapp, Note, Jim “USDA” Crow: Symptomatic Discrimination in Agriculture, 8 Drake J. Agric. L. 237, 248 (2003) (“Within this bureaucracy, the USDA’s failure to address the issue of discriminatory procedures in lending is illustrated by the fact that many loan officers charged with discriminatory practice have retained their positions.”).

184. Members of the class were African Americans who had farmed between January 1, 1981, and December 31, 1996, and had also filed a discrimination complaint on or before July 1, 1997, regarding alleged discriminatory treatment by the USDA. Order Granting Class Certification, *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (No. 97-1978 (PLF)).

185. Francis, *supra* note 131, at 49 (internal quotation marks omitted) (quoting the *Pigford* plaintiffs).

186. In particular, they had to show they had been treated worse than a “specifically identified, similarly situated” White farmer. See *Pigford*, 185 F.R.D. at 105.

the evidence.¹⁸⁷ The settlement, initially valued at \$1.06 billion, established a six-month filing window for eligible farmers to submit claims beginning on November 9, 1999.¹⁸⁸

For many, however, the promise of redress proved elusive. Roughly 31% of claimants were denied compensation, often because their filings were deemed untimely.¹⁸⁹ The USDA's notice campaign failed to reach many eligible farmers, and a substantial number of claimants—misinformed, inadequately represented, or both—missed the tight court-imposed deadlines.¹⁹⁰ Attorneys frequently failed to comply with the decree's procedural requirements, leading to USDA objections and judicial dismissals.¹⁹¹ Allegations of obstruction by court officers and government representatives only deepened distrust and resentment.¹⁹² In total, approximately 97% of late-filed petitions were rejected, despite their credible claims of prior discrimination.¹⁹³

In response to the shortcomings of *Pigford*, Congress enacted section 14012 of the Food, Conservation, and Energy Act of 2008, granting a second opportunity for claimants previously denied relief due to

187. *Id.* at 105–07 (“In order to prevail on his claims, a Track B claimant must prove by a preponderance of the evidence that ‘he was the victim of racial discrimination and that he suffered damages therefrom.’” (quoting Consent Decree ¶ 10(g), *Pigford*, 185 F.R.D. 82)).

188. Cowan & Feder, *supra* note 156, at 3, 4, 7 (describing how “[t]he federal government provided a total of approximately \$1.06 billion (\$1,058,577,198) in cash relief” for claimants who “file[d] their claim . . . within 180 days of the consent decree”).

189. *Id.* at 10 (“[N]early 7,000 Track A claims in *Pigford* (31%) were denied relief, presumably because such claims lacked merit or had other defects.”).

190. ‘Notice’ Provision in the *Pigford v. Glickman* Consent Decree: Hearing Before the Subcomm. on the Const., 108th Cong. 2 (2004) [hereinafter Hearing on ‘Notice’ Provision] (statement of Rep. Chabot) (“Reports indicate that approximately 66,000 potential class members submitted their claims late, most because they did not know that they were required to submit a claim sooner, thus losing their right to sue the USDA for past wrongs.”). But see *Pigford*, 185 F.R.D. at 101–02 (concluding that “class members have received more than adequate notice”).

191. *Pigford v. Veneman*, 144 F. Supp. 2d 16, 19 (D.D.C. 2001) (stating that “[c]ounsel’s negligent handling of the final stages of this case, however, runs the risk of jeopardizing counsel’s prior accomplishments”).

192. See Hearing on ‘Notice’ Provision, *supra* note 190, at 4 (statement of Rep. Chabot) (“The court . . . gave the Arbitrator carte blanche authority to determine whether or not late claims should be let in due to extraordinary circumstances. Unfortunately . . . virtually no one [was] able to show that they did not file due to extraordinary circumstances.”); *id.* at 295 (prepared statement of Lawrence C. Lucas, USDA Coal. Minority Emp.) (alleging a “scheme to block settlements and obstruct justice” by USDA, DOJ, and the plaintiffs’ counsel); *id.* at 205 (statement of Bernice Atchison, Farmer) (asserting that USDA and class counsel “defied the judge’s order” to post or mail notice).

193. See Cowan & Feder, *supra* note 156, at 5 (“Approximately 73,800 *Pigford II* petitions (66,000 before the September 15, 2000, late filing deadline) were filed under the late filing procedure, of which 2,116 were ultimately allowed to proceed under the *Pigford I* process.”); Francis, *supra* note 131, at 54–55 (“[N]early 66,000 petitions were filed late and thus not heard.”).

procedural defects.¹⁹⁴ Of the roughly eighty-nine thousand claim forms distributed under this new provision, around forty thousand were returned, and about thirty-four thousand were deemed complete and eligible.¹⁹⁵ These claims were consolidated into *In re Black Farmers Discrimination Litigation (Pigford II)*, yielding an additional \$1.25 billion settlement with the USDA.¹⁹⁶

Combined, the *Pigford* settlements distributed roughly \$2.3 billion for Black farmers, one of the most substantial government-led efforts to address racial injustice in rural America since the Civil Rights Act of 1964.¹⁹⁷ The litigation also opened the door for similar settlements involving Native American, Hispanic American, and female farmers.¹⁹⁸ Nevertheless, many Black farmers who received Track A awards—the more accessible but less remunerative path—found the \$50,000 payments insufficient to resolve accumulated debts or recover lost land.¹⁹⁹ As Judge Paul Friedman, who oversaw both cases, acknowledged, “[I]t is probable that no amount of money can fully compensate class members for past acts of discrimination.”²⁰⁰ Indeed, the \$2.3 billion disbursed pales in comparison to the estimated \$326 billion in economic losses attributed to

194. Congress overrode a veto of the law by President George W. Bush. See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 14012(b), 122 Stat. 1651, 2210 (allowing refiling of claims by claimants “who [have] not previously obtained a determination on the merits”); see also Detailed Background Information, In Re Black Farmers Discrimination Litigation Settlement, <https://blackfarmerscase.com/Background.aspx> (on file with the *Columbia Law Review*) (last visited Oct. 26, 2025).

195. Cowan & Feder, *supra* note 156, at 8.

196. *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 7, 23 (D.D.C. 2011).

197. Laura Reiley, Relief Bill Is Most Significant Legislation for Black Farmers Since Civil Rights Act, Experts Say, *Wash. Post* (Mar. 8, 2021), <https://www.washingtonpost.com/business/2021/03/08/reparations-black-farmers-stimulus> (on file with the *Columbia Law Review*).

198. See, e.g., Order on Plaintiffs’ Motion for Final Approval of Settlement, Motion for Approval of Class Representative Service Awards, and Motion for an Award of Attorneys’ Fees and Expenses at 2–3, *Keepseagle v. Vilsack*, No. 1:99-cv-03119-EGS(D.D.C. Apr. 28, 2011) (approving \$760 million in relief for Native American farmers and ranchers); USDA’s Combined Opposition to Plaintiffs’ Motion to Review Defendant’s Proposed Notice and Terms of Class-Wide Settlement, and to Certify a Settlement Class, and Opposition to Plaintiffs’ Emergency Motion to Stay Publication of Defendant’s Proposed Notice of a Class-Wide Settlement Pending Court Review at 2, *Garcia v. Vilsack*, No. 1:00-cv-02445-RBW (D.D.C. Oct. 20, 2010) (proposing to allocate \$1.33 billion “to settle claims of Hispanic and female farmers who allege discrimination by USDA between 1981 and 2000”); see also Order at 1, *Love v. Vilsack*, No. 1:00-cv-02502-RBW(D.D.C. July 19, 2010) (order staying the case and administratively closing matter for female farmers pending completion of settlement negotiations).

199. See Ginapp, *supra* note 183, at 245–47 (stating that “most people who recover under the consent decree . . . no longer farm or own farmland” and describing the settlement as “too little, too late” (internal quotation marks omitted) (quoting Hamil R. Harris, *Can’t Save the Farm*, *Black Enter.*, Dec. 2000, at 34, 34)).

200. *Pigford v. Glickman*, 185 F.R.D. 82, 108 (1999).

the dispossession of millions of acres of Black-owned farmland throughout the twentieth century.²⁰¹

The limits of litigation became starkly apparent during the Trump Administration's response to the COVID-19 pandemic. Emergency aid programs, including the Paycheck Protection Program and the Coronavirus Food Assistance Program, disproportionately benefited White farmers.²⁰² Black farmers, still reeling from generations of systemic exclusion, received only a fraction of the available support, mirroring earlier patterns of unequal treatment. Despite the formal resolution of *Pigford*, the federal government has yet to fully reckon with how state-sanctioned discrimination contributed to Black land loss or how that loss continues to fuel deep socioeconomic inequality in Black rural communities today.

B. *Contemporary Legislative Reform Efforts*

The limitations exposed by *Pigford's* aftermath, combined with the glaring inequities in pandemic relief, prompted advocates and progressive lawmakers to pursue more comprehensive legislative solutions. In 2020, against the backdrop of the COVID-19 pandemic and a contentious presidential election, Senator Cory Booker joined forces with other progressive Democrats to introduce landmark legislation aimed at confronting the entrenched racial disparities in American agriculture.²⁰³ Although civil rights advocates had long challenged the racially exclusionary architecture of federal agricultural policy, White farmers remained dominant across nearly every segment of the industry.²⁰⁴ That dominance reflected the enduring legacy of racial violence and dispossession in Black rural communities and contributed to persistent food insecurity in segregated Black neighborhoods nationwide.²⁰⁵

The Justice for Black Farmers Act of 2020, introduced by Senator Booker and cosponsored by Senators Elizabeth Warren and Kirsten Gillibrand, marked a comprehensive attempt to redress more than a

201. See Francis et al., *supra* note 8, at 41 (conducting a quantitative analysis and finding a “cumulative value of Black land loss of roughly \$326 billion”).

202. Nadra Nittle, *Black-Owned Farms Are Holding on by a Thread*, *Eater* (Feb. 23, 2021), <https://www.eater.com/22291510/Black-farmers-fighting-for-farmland-discrimination-in-agriculture> [<https://perma.cc/FZP4-XG66>].

203. Justice for Black Farmers Act of 2020, S. 4929, 116th Cong. (2020).

204. See, e.g., Daniel, *Dispossession*, *supra* note 86, at 5 (“[B]lack farmers suffered the most debilitating discrimination during the civil rights era, when laws supposedly protected them from bias. The increase in programs and the USDA’s swelling bureaucracy had an inverse relationship to the number of farmers . . .”).

205. See generally Margaret Marietta Ramírez, *The Elusive Inclusive: Black Food Geographies and Racialized Food Spaces*, 47 *Antipode* 748, 750 (2015) (linking historical racial violence and dispossession to food insecurity and food access in Black communities).

century of anti-Black discrimination, both within and beyond the USDA.²⁰⁶ At its core, the bill proposed sweeping structural reforms to USDA programs and governance systems, including the creation of an Independent Civil Rights Oversight Board, an Equity Commission to examine discriminatory practices, and a Civil Rights Ombudsman within the Agency.²⁰⁷ It also sought material redress through debt relief for Black farmers with unresolved discrimination claims, business development grants, and, notably, a land grant initiative designed to return farmland wrongfully taken from Black families through fraud, violence, or discriminatory federal policy.²⁰⁸

Although the bill initially stalled in the Republican-controlled Senate, Senator Booker reintroduced it in February 2021 with expanded support from Senators Tina Smith, Raphael Warnock, and Patrick Leahy.²⁰⁹ In the House, Congresswoman Alma Adams introduced a companion bill backed by more than one hundred advocacy organizations.²¹⁰ To its sponsors, the legislation represented not only agricultural reform but an effort to remedy patterns of racial exclusion long sanctioned by law.²¹¹ As Senator Booker explained, “[T]here is a direct connection between discriminatory USDA policies and the enormous land loss we have seen among Black farmers over the past century.”²¹² Additionally, “[t]he Justice for Black Farmers Act will address and correct USDA discrimination and take bold steps to forgive debt and restore the land that has been lost in order to empower a new generation of Black farmers to succeed and thrive.”²¹³

206. S. 4929 (proposing structural reforms to the USDA and land-based reparative measures for Black farmers).

207. Cory Booker, Justice for Black Farmers Act: Section-by-Section Summary, <https://www.booker.senate.gov/imo/media/doc/JBF%20Section%20by%20Section%2011.16.20.pdf> [<https://perma.cc/ER3X-VUYB>] (last visited Oct. 10, 2025).

208. Akin to a modern Homestead Act, the Equitable Land Access Service would seek to make no less than twenty thousand grants per year over nine years and provide farmers with access to USDA operating loans and mortgages with a broader goal of addressing the racial injustices that have plagued Black farmers since the Reconstruction Era. See *id.*

209. Senator Bernie Sanders would join as a cosponsor on March 10, 2021, and Senator Richard Blumenthal on November 30, 2021. S. 300, 117th Cong. (2021).

210. The reintroduced house bill was cosponsored by Representatives Joyce Beatty, Danny Davis, Alcee Hastings, Jahana Hayes, Eddie Bernice Johnson, Al Lawson, Donald Payne, Jr., Stacey Plaskett, Ayanna Pressley, Bobby Rush, and Terri Sewell. H.R. 1393, 117th Cong. (2021).

211. Press Release, Cory Booker, Comprehensive Bill, *supra* note 26.

212. *Id.* (internal quotation marks omitted) (quoting Sen. Booker); see also Cory Booker, Booker Leads Colleagues in Reintroducing the Justice for Black Farmers Act (Jan. 26, 2023), <https://www.booker.senate.gov/news/press/booker-leads-colleagues-in-reintroducing-the-justice-for-black-farmers-act> [<https://perma.cc/7XXS-N2X6>]; Jared Hayes, Timeline: Black Farmers and the USDA, Env't Working Grp. (Feb. 1, 2021), <https://www.ewg.org/research/black-farmer-usda-timeline/> [<https://perma.cc/LWU8-6D7U>] (pointing to several moments in history which spurred decreases in farm ownership by Black Americans).

213. Press Release, Cory Booker, Comprehensive Bill, *supra* note 26 (internal quotation marks omitted) (quoting Sen. Booker).

While the comprehensive Justice for Black Farmers Act remained stalled in Congress, lawmakers advanced a more targeted initiative through pandemic relief. In March 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA), a \$1.9 trillion economic stimulus package aimed at supporting families and businesses amid economic disruption.²¹⁴ Within that package, approximately \$10.4 billion was allocated to support agricultural and food supply chain resiliency.²¹⁵ Of particular significance was section 1005, titled Farm Loan Assistance for Socially Disadvantaged Farmers and Ranchers,²¹⁶ introduced as the Emergency Relief for Farmers of Color Act by Senator Warnock.²¹⁷ The provision authorized approximately \$4 billion in direct relief payments, permitting socially disadvantaged farmers to receive payments covering up to 120% of their outstanding USDA loan debts, with the additional 20% intended to offset associated taxes and fees.²¹⁸

In addition to direct debt relief, section 1006 allocated an additional \$1.01 billion for technical assistance programs, business development support, and agricultural education at HBCUs and other minority-serving institutions.²¹⁹ It also mandated the creation of a USDA equity commission to examine the agency's discriminatory history.²²⁰ The Congressional

214. American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (codified in scattered titles of the U.S.C.).

215. This initiative reflected Biden's campaign promise to "Build Back Better in Rural America." The Biden-Harris Plan to Build Back Better in Rural America, Biden Harris for President, <https://joebiden.com/rural-plan> (on file with the *Columbia Law Review*); Press Release, USDA, Fact Sheet: United States Department of Agriculture Provisions in H.R. 1319, the American Rescue Plan (Mar. 10, 2021), <https://www.usda.gov/media/press-releases/2021/03/10/fact-sheet-united-states-department-agriculture-provisions-hr-1319> [<https://perma.cc/3EL5-WAXP>].

216. American Rescue Plan Act § 1005.

217. Emergency Relief for Farmers of Color Act of 2021, S. 278, 117th Cong. (2021) (proposing \$5 billion in debt relief and assistance to socially disadvantaged farmers and ranchers).

218. See Congress Clears Another Round of Pandemic Aid With Historic Support for BIPOC Farmers, Nat'l Sustainable Agric. Coal.: NSAC's Blog (Mar. 11, 2021), <https://sustainableagriculture.net/blog/american-rescue-plan/> [<https://perma.cc/C2EU-ATLJ>] ("Farmers could use the additional relief funds to pay any taxes owed as a result of the debt relief."). Direct loans, which the USDA planned to tackle first, are loans provided directly to farmers or ranchers from the USDA's Farm Service Agency ("FSA"), whereas guaranteed loans are provided to farmers or ranchers by private USDA-approved lenders with the loan guarantee of the FSA. Under the bill, both delinquent and current loans would be eligible for debt relief. See Press Release, USDA, In Historic Move, USDA to Begin Loan Payments to Socially Disadvantaged Borrowers Under American Rescue Plan Act Section 1005 (May 21, 2021), <https://www.usda.gov/media/press-releases/2021/05/21/historic-move-usda-begin-loan-payments-socially-disadvantaged> [<https://perma.cc/E22W-V6XU>] [hereinafter Press Release, USDA, Section 1005 Announcement]; see also S. 278.

219. Ass'n of Pub. & Land-Grant Univs., Analysis of the American Rescue Plan Act of 2021 (2021), <https://www.aplu.org/wp-content/uploads/aplu-analysis-of-the-american-rescue-plan-act-1.pdf> [<https://perma.cc/YH8G-C7V5>].

220. American Rescue Plan Act of 2021, Pub. L. No. 117-2 § 1006(b)(3), 135 Stat. 4, 13 (codified at 7 U.S.C. § 2279 (2024)); Press Release, USDA, In Major Step to Implement

Budget Office estimated that the average debt relief payment under section 1006 would be roughly \$20,000 and reach approximately 15,000 socially disadvantaged farmers and ranchers across the country.²²¹

On May 26, 2021, the USDA's Farm Service Agency issued a Notice of Funding Availability (NOFA), which outlined the implementation plan for distributing relief payments.²²² The FSA planned to issue payment offer letters to eligible direct-loan borrowers, followed by additional guidance for guaranteed-loan borrowers.²²³ Farmers could secure relief by returning a completed offer letter or by requesting one if they had not already received an offer letter by mail.²²⁴ Disbursements were expected to begin in June 2021.

Implementation, however, quickly became mired in controversy over the statute's use of the term "socially disadvantaged." Although section 1005 did not expressly exclude White farmers who had experienced USDA discrimination from applying for relief, the statutory language—and USDA guidance—generated confusion. The USDA identified socially disadvantaged groups as including, but not limited to, "farmers who are Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander."²²⁵

Conservative politicians and commentators seized on this guidance to argue that the law discriminated against White farmers, particularly those

American Rescue Plan, USDA Announces Membership of Newly Formed Equity Commission (Feb. 10, 2022), <https://www.usda.gov/about-usda/news/press-releases/2022/02/10/major-step-implement-american-rescue-plan-usda-announces-membership-newly-formed-equity-commission> [<https://perma.cc/CS3M-N2XW>] ("[T]he launch of the independent Commission delivers on President Biden's commitment to create an independent Equity Commission and provide it with the necessary resources to support its mission to address historical discrimination at USDA.").

221. Congress Clears Another Round of Pandemic Aid with Historic Support for BIPOC Farmers, *supra* note 218 ("According to estimates from the Congressional Budget Office (CBO), approximately 15,000 BIPOC farmers will receive an average debt relief payment of \$20,000."); Alan Rappeport & Ana Swanson, Biden Administration Ramps Up Debt Relief Program to Help Black Farmers, *N.Y. Times* (Mar. 25, 2021), <https://www.nytimes.com/2021/03/25/us/politics/biden-debt-relief-black-farmers.html> (on file with the *Columbia Law Review*) (reporting Agriculture Department estimates that the bill could provide relief for up to 15,000 loans).

222. Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA), 86 Fed. Reg. 28,329 (May 26, 2021).

223. Press Release, USDA, Section 1005 Announcement, *supra* note 218 ("The [FSA] today published the first [NOFA] A subsequent notice addressing guaranteed loan balances and direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset, will be published within 120 days.").

224. Notice of Funds Availability, 86 Fed. Reg. 28,329.

225. See Foster & Austin, *supra* note 17, at 162 (internal quotation marks omitted) (quoting Socially Disadvantaged, Beginning, Limited Resource, and Female Farmers and Ranchers, USDA (Feb. 15, 2022), <https://www.ers.usda.gov/topics/farm-economy/socially-disadvantaged-beginning-limited-resource-and-female-farmers-and-ranchers/> [<https://perma.cc/7JK8-DRSJ>]).

who did not receive offer letters for debt forgiveness. Critics characterized the program as racially exclusionary,²²⁶ despite its reliance on longstanding USDA definitions and its remedial purpose of addressing decades of racially discriminatory lending. Senator Pat Toomey called the program “unconstitutional,” claiming it violated the Equal Protection Clause by offering relief based on race.²²⁷ Senator Lindsey Graham, appearing on Fox News, attacked “out-of-control liberals,” contending, “your loan will be forgiven up to 120% of your loan . . . if you’re African American, some other minority, but if you’re [a] white person, if you’re a white woman, no forgiveness. That’s reparations.”²²⁸ Such claims, though politically effective, obscured the program’s legal foundation and remedial rationale. Nevertheless, the political backlash would soon imperil the program’s future.

C. *Political and Legal Challenges to Racial Equity in Farming*

The Justice for Black Farmers Act drew immediate criticism from conservative lawmakers and commentators, many of whom framed it as a form of racial reparations for America’s history of White supremacy and coerced Black labor in agriculture.²²⁹ While a full evaluation of reparations for Black farmers lies beyond this Essay’s scope, racism has undeniably shaped land ownership patterns throughout U.S. history. Federal and state laws repeatedly structured access to land in ways that privileged White Americans and excluded people of color. For example, the 1850 Donation Land Claim Act reserved 320-acre parcels in the Oregon Territory exclusively for White settlers following the forced removal of Indigenous nations.²³⁰ Similarly, the 1862 Homestead Act transferred more than 270 million acres of land—roughly 10% of the United States—to White Americans alone, cementing a racialized system of land distribution and wealth accumulation.²³¹

226. See *id.* at 173 (“[T]he text (of the statute) may be interpreted as giving preference to the listed groups, while not making funding determinations exclusively on that basis.”).

227. Jeanine Santucci, *How \$1.9 Trillion COVID-19 Relief Bill Aims to Help Black and Socially Disadvantaged Farmers*, USA Today (Mar. 13, 2021), <https://www.usatoday.com/story/news/politics/2021/03/13/how-covid-relief-bill-aims-to-help-socially-disadvantaged-farmers/4637103001/> [<https://perma.cc/B7EX-47PX>] (last updated Mar. 14, 2021) (internal quotation marks omitted) (quoting Sen. Toomey).

228. *Id.* (alteration in original) (internal quotation marks omitted) (quoting Sen. Graham).

229. John Bowden, *Graham on COVID-19 Aid to Black Farmers: ‘That’s Reparations’*, The Hill (Mar. 10, 2021), <https://thehill.com/homenews/senate/542483-graham-on-covid-19-relief-aid-to-black-farmers-thats-reparations> [<https://perma.cc/7ZVT-JBTA>].

230. Margaret Riddle, *Donation Land Claim Act, Spur to American Settlement of Oregon Territory, Takes Effect on September 27, 1850*, HistoryLink.org (Aug. 9, 2010), <https://www.historylink.org/file/9501> [<https://perma.cc/N6CP-M6E2>].

231. Todd Arrington, *Homesteading by the Numbers*, Nat’l Park Serv. (Aug. 8, 2021), <https://www.nps.gov/home/learn/historyculture/bynumbers.htm> [<https://perma.cc/Q25Q-P7K9>] (last updated Mar. 17, 2025).

This foundation of inequality only deepened as large agricultural interests consolidated political power. Reported federal lobbying expenditures increased from \$4.7 million in 1966 to \$76 million in 1989, even before modern disclosure requirements took effect.²³² This growth reflected the sector's expanding economic influence and its capacity to shape federal policy, often in ways that favored large agribusinesses at the expense of smaller farms, many of which were Black-owned. Corporate interests secured unparalleled access to policymakers, influencing subsidy allocations, regulatory decisions, and land use policies.²³³ As a result, the voices of small farmers—especially those from historically marginalized communities—were routinely excluded from agricultural policymaking.²³⁴ Contemporary resistance to reform thus reflects not only ideological and fiscal objections but also longstanding structural forces rooted in the plantation era. While the mechanisms of exclusion have evolved, the

232. Jacob R. Straus, Cong. Rsch. Serv., R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress 16* (2015), <https://www.congress.gov/crs-product/R44292> [<https://perma.cc/7HBT-JH5U>] (noting that 296 organizations reported \$4.7 million in lobbying expenditures in 1966 (quoting *First Attempt at Lobbying Reform Since 1946 Fails*, CQ Almanac (1967), <http://library.cqpress.com/cqalmanac/document.php?id=cqal67-1314712> (on file with the *Columbia Law Review*))); U.S. Gen. Acct. Off., T-GGD-91-56 *Federal Lobbying: Federal Regulation of Lobbying Act of 1946 Is Ineffective*, (1991), <https://www.gao.gov/products/t-ggd-91-56> [<https://perma.cc/G8BS-MEBD>] (reporting \$76.2 million in lobbying expenses that year).

233. See, e.g., Omanjana Goswami & Karen Perry Stillerman, *Union of Concerned Scientists, Cultivating Control: Corporate Lobbying on the Food and Farm Bill 5* (2024) https://www.ucs.org/sites/default/files/2024-05/Cultivating%20Control_white%20paper%20final_May%2010_OG_PDF.pdf [<https://perma.cc/D2E6-WMDX>] (“Between 2019 and 2023, giant agribusinesses, food and agriculture industry associations, and other interest groups reported more than \$523 million in federal lobby expenditures on disclosure reports that listed ‘farm bill’ among the specific lobbying issues.”); T. Kirk White & Robert A. Hoppe, *USDA, Changing Farm Structure and the Distribution of Farm Payments and Federal Crop Insurance, at iii* (2012), https://ers.usda.gov/sites/default/files/_laserfiche/publications/44650/13729_eib91_1_.pdf [<https://perma.cc/LNC2-CP3T>] (“A long-term shift in production to larger farms has contributed to a shift in the distribution of commodity-related Government program payments and Federal crop indemnity payments toward larger farms . . .”).

234. See Pete Daniel, *Farmland Blues: The Legacy of USDA Discrimination*, *Southern Spaces* (Oct. 30, 2013), <https://southernspaces.org/2013/farmland-blues-legacy-usda-discrimination> [<https://perma.cc/KC4L-WHAL>] (linking exclusion at the county-office level to broader policy outcomes that neglected small, marginalized producers); Goswami & Stillerman, *supra* note 233, at 1 (urging reorientation of policymaking toward small/midsize and historically marginalized producers); Dipak Subedi, Anil K. Giri & Monika Ghimire, *Commercial Farms Led in Government Payments in 2021*, *USDA Econ. Rsch. Serv.: Amber Waves* (May 15, 2023), <https://www.ers.usda.gov/amber-waves/2023/may/commercial-farms-led-in-government-payments-in-2021> [<https://perma.cc/E3FP-XL7R>] (“Among the farm households that received Government payments, commercial farms received an average \$66,314 in Government payments in 2021 (the most recent year for which data are available); intermediate farms received an average \$12,794 in payments, and the average Government payments for residence farms was \$8,354.”).

industry's underlying oligarchic structure—now reinforced by concentrated lobbying and institutional capture—remains largely intact.

Senator Graham's remarks suggested that the USDA intentionally excluded White individuals from the definition of "socially disadvantaged" farmers and ranchers. His comments may also reflect a deeper ideological stance aligned with a White supremacist worldview that assumes White Americans cannot experience racial discrimination by the government. Either reading tacitly acknowledges the historical privileges that White Americans have enjoyed, even among economically struggling farmers, and illustrates the discomfort that arises when White hardship is juxtaposed against the structurally embedded disadvantage endured by Black farmers. Yet Senator Graham's critique overlooks two essential points.

First, White supremacy has fundamentally shaped American agriculture, producing racial disparities that continue to define the sector.²³⁵ These inequalities are often obscured by narratives of meritocracy and American republicanism,²³⁶ but they also contribute to class-based stigma against low-income White Americans.²³⁷ While Black and other historically marginalized farmers have borne the brunt of discriminatory federal policies, the racialized structure of U.S. agriculture has simultaneously obscured White poverty.²³⁸ In a society organized around White supremacy, White individuals are often presumed to be

235. See, e.g., Kathryn Fitzgerald, Note, Remnants of Caste: Black Farmers, White Farmers, Congress, and the USDA, 23 U. Md. L.J. Race Religion Gender & Class 81, 82–83 (2023) ("In considering the well-documented, unfortunate history of rampant racial discrimination by the USDA since its inception and the resulting impact on Black land ownership loss throughout at least the Twentieth Century, these race-based classifications appear to still be relevant in the context of the American agricultural landscape." (footnotes omitted) (citing Daniel, Dispossession, *supra* note 86, at 26–27; Francis et al., *supra* note 8, at 38)).

236. See Harris, Color of Farming, *supra* note 126, at 181–83 (documenting how federally administered farm credit and technical assistance programs, while formally race-neutral, functioned to preserve White control of land and capital, thereby sustaining the appearance of equal opportunity in agriculture); cf. Chris Edwards, Cutting Federal Farm Subsidies, Cato Inst. (Aug. 31, 2023), <https://www.cato.org/briefing-paper/cutting-federal-farm-subsidies> [<https://perma.cc/7AAR-RB48>] ("Farming is a risky business, but the risk does not seem to be any greater than for many other industries and therefore not a justification for farming's unique government security blanket.").

237. Cf. Edwards, *supra* note 236 ("The programs discourage farmers from innovating and cutting costs, and they steer resources to households with incomes much higher than average U.S. incomes."). For a broader history of stigma against lower-income White Americans, see generally Katherine J. Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* 25 (2016) (capturing the lived experience of status denigration among low-income and working-class Whites); Nancy Isenberg, *White Trash: The 400-Year Untold History of Class in America* (tracing how elites and cultural institutions codified contempt for poor White individuals through slurs and caricatures).

238. See Fitzgerald, *supra* note 235, at 95–96 (discussing the assumption that White farmers were precluded from applying for debt relief).

immune from both overt and structural forms of racism,²³⁹ making the inclusion of White Americans in remedial policies appear illogical or unnecessary.²⁴⁰ Yet racial bias can manifest as privilege that paradoxically masks genuine disadvantage.²⁴¹ Low-income White farmers are frequently dismissed as unproductive or undeserving of assistance, not because their needs are absent, but because prevailing racial frameworks fail to account for their socioeconomic marginalization.²⁴² A more comprehensive analysis of competition and inequality in agriculture would expose how capitalism and White supremacy intersect to obstruct reforms capable of uplifting all low-income farmers, regardless of race.

Second, contrary to Senator Graham's assertion, debt relief under ARPA section 1005 was directly tethered to the COVID-19 pandemic's economic disruptions. Empirical studies have documented the historical correlation between USDA discrimination and the loss of farmland, high debt burdens, and limited access to credit in Black farming communities.²⁴³ Black farmers have long faced systemic barriers in securing USDA loans and grants,²⁴⁴ alongside predatory practices such as

239. See *id.* (noting that the USDA excluded White farmers from its definition of "socially disadvantaged farmers and ranchers").

240. See, e.g. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331, 1344–46 (1988) (explaining that the rise of colorblind ideology narrowed the concept of racism from structural subordination to individual prejudice, which resulted in policies that might also address White disadvantages appearing conceptually incoherent within liberal legal discourse).

241. See *id.* at 1348 ("In antidiscrimination law, the conflicting interests actually reinforce existing social arrangements, moderated to the extent necessary to balance the civil rights challenge with the many interests still privileged over it."); Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind"*, 44 *Stan. L. Rev.* 1, 2–3 (1991) ("A color-blind interpretation of the Constitution legitimates, and thereby maintains, the social, economic, and political advantages that whites hold over other Americans."); Reva B. Siegel, *Discrimination in the Eyes of the Law: How "Color Blindness" Discourse Disrupts and Rationalizes Social Stratification*, 88 *Calif. L. Rev.* 77, 91–92, 106 (2000) ("[Colorblindness] works both to discredit and to rationalize practices that maintain social stratification."); Jonathan M. Metz, *Dying of Whiteness*, *Bos. Rev.* (June 27, 2019), <https://www.bostonreview.net/articles/jonathan-m-metzl-dying-whiteness/> (on file with the *Columbia Law Review*) (observing that some lower-income White individuals were willing to "put their lives on the line" to support racial resentment policies that also hurt themselves).

242. See Daniel, *Dispossession*, *supra* note 86, at 32 (telling the story of a poor White woman whose request for assistance was denied by the USDA for four years, eventually forcing her to sell her farm).

243. See, e.g., Browning, *supra* note 96, at 37–40 (finding that discriminatory USDA loan practices contributed directly to widespread Black farm loss); Mitchell, *supra* note 137, at 570–73 (summarizing empirical data linking USDA credit discrimination to debt accumulation and foreclosure); John Francis Ficara & Juan Williams, 'Black Farmers in America', *NPR* (Feb. 22, 2005), <https://www.npr.org/2005/02/22/5228987/black-farmers-in-america> [<https://perma.cc/DT9A-NYGW>] ("[D]ecades of bias against black farmers by the agriculture department threatened to kill off the few remaining black farmers.").

244. See Vann R. Newkirk II, *The Great Land Robbery*, *The Atlantic* (Sep. 2019), <https://www.theatlantic.com/magazine/archive/2019/09/this-land-was-our->

forced partition sales of heirs' property.²⁴⁵ Meanwhile, emergency relief programs like the Trump Administration's Market Facilitation Program disproportionately benefited White farmers,²⁴⁶ compounding the historic and ongoing disadvantages experienced by farmers of color. The political and legal resistance to these reform efforts reflects larger structural forces rooted in the decades-long consolidation of agricultural lobbying power. Between 1960 and 1990, agricultural lobbying expenditures grew dramatically, signaling the sector's growing capacity to influence federal policy.²⁴⁷ The enduring consolidation of agricultural power thus not merely precedes but also frames the political and legal backlash to modern equity measures, including recent efforts to remedy past discrimination.

Despite Secretary Thomas Vilsack's stated commitment to advancing civil rights within the USDA,²⁴⁸ the backlash to section 1005 prompted a wave of political and legal opposition. Forty-nine Republican senators unsuccessfully attempted to strip the debt relief provision from the legislation, with several denouncing it as a form of reparations.²⁴⁹ Before the USDA could begin issuing debt relief payments, White farmers filed lawsuits in multiple federal courts, alleging that the program

land/594742/ (on file with the *Columbia Law Review*) ("Major audits and investigations of the USDA have found that illegal pressures levied through its loan programs created massive transfers of wealth from black to white farmers . . .").

245. See Thomas W. Mitchell, Stephen Malpezzi & Richard K. Green, *Forced Sale Risk: Class, Race, and the "Double Discount"*, 37 *Fla. St. U. L. Rev.* 589, 618 (2010) ("[O]f all the property owners who own property under the default rules governing the partition of tenancy in common and joint tenancy property, African Americans and other minorities may be targeted for forced partition sales in one way or another.").

246. See Nathan P. Hendricks, Ashling P. Murphy, Stephen N. Morgan, Samantha L. Padilla & Nigel Key, *Explaining the Source of Racial Disparities in Market Facilitation Program Payments*, 107 *Am. J. Agric. Econ.* 1290, 1296 (2025) (concluding that "[f]arms with a White operator were eligible to receive about 4.7 times larger [Market Facilitation Program] payments than farms with a Black operator"); Hayes, *Pandemic Bailout Funds*, supra note 170 ("White farmers received a total of about \$21 billion [in Market Facilitation Program payments], while Black farmers received a total of about \$38 million.").

247. See Straus, supra note 232, at 16 (noting that federal lobbying activity and expenditures expanded dramatically in the latter half of the twentieth century); see also supra note 232 and accompanying text.

248. See Press Release, Thomas J. Vilsack, Secretary, USDA, *Opening Statement of Thomas J. Vilsack Before the House Committee on Agriculture—Remarks as Prepared* (Mar. 25, 2021), <https://www.usda.gov/media/press-releases/2021/03/25/opening-statement-thomas-j-vilsack-house-committee-agriculture> [<https://perma.cc/RN2Y-MD5C>] (reaffirming a commitment to "ensur[ing] all programming is equitable and works to root out systemic racism").

249. See Nicholas Ballasy, *Senate Dems Reject Effort to Remove Reparations for "Disadvantaged Farmers" From Stimulus Bill*, *Just News* (Feb. 26, 2021), <https://justthenews.com/government/congress/democrats-19t-stimulus-bill-includes-reparations-socially-disadvantaged-farmers> [<https://perma.cc/GRY8-ZEUD>] ("The legislation ultimately passed the Senate on Saturday 50–49 without votes from Republicans."); Santucci, supra note 227 (discussing Sen. Graham's characterization of the bill as a form of reparations).

discriminated against them on the basis of race.²⁵⁰ In *Faust v. Vilsack*, for example, plaintiffs argued that the debt relief program's eligibility criteria relied on impermissible racial classifications in violation of their equal protection rights.²⁵¹

These lawsuits became largely moot when President Biden signed the Inflation Reduction Act of 2022 (IRA) into law.²⁵² The IRA repealed ARPA section 1005 and replaced it with a race-neutral debt relief program.²⁵³ Instead of focusing on "socially disadvantaged" farmers (which was purportedly limited to certain race and ethnic groups),²⁵⁴ the IRA directed relief toward "distressed" borrowers facing financial risk, regardless of race.²⁵⁵ It also created a \$2.2 billion fund for farmers, ranchers, and forest landowners who had experienced USDA discrimination before January 1, 2021.²⁵⁶ Unlike section 1005, the IRA's Discrimination Financial Assistance Program does not limit eligibility to specific racial or ethnic groups, instead allowing claims based on a broader range of protected characteristics, including sex, religion, age, marital status, and disability.²⁵⁷

The repeal of section 1005 raises unresolved legal and normative questions about whether the original program violated the equal protection rights of White farmers and ranchers. Part III turns to these constitutional questions through the lens of *Wynn v. Vilsack*, which further illuminates the doctrinal tensions surrounding race-conscious agricultural reform.

250. See, e.g., *Miller v. Vilsack*, No. 4:21-CV-0595-O, 2021 WL 6129207, at *1 (N.D. Tex. Dec. 8, 2021); *Holman v. Vilsack*, No. 21-1085-STA-jay, 2021 WL 2877915, at *4 (W.D. Tenn. July 8, 2021); *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1275 (M.D. Fla. 2021); *Faust v. Vilsack*, 519 F. Supp. 3d 470, 473 (E.D. Wis. 2021).

251. *Faust*, 519 F. Supp. 3d at 473 ("Plaintiffs assert that Section 1005 [of the ARPA] denies them equal protection of the law because eligibility to participate in the program is based solely on racial classifications.").

252. Pub. L. No. 117-169, 136 Stat. 1818 (2022); Caleb Symons, Racial Bias Suit Dropped After Aid Cut for Minority Farmers, *Law360* (Aug. 30, 2022), <https://www.law360.com/articles/1525752/racial-bias-suitdropped-after-aid-cut-for-minority-farmers> (on file with the *Columbia Law Review*) ("[The IRA] renders moot the white farmers' April 2021 lawsuit alleging the previous loan forgiveness program—enacted as part of the American Rescue Plan—was racially prejudiced . . .").

253. Caleb Symons, Minority Farmers Say US Broke Promise of Financial Aid, *Law360* (Oct. 13, 2022), <https://www.law360.com/articles/1539445/minority-farmers-say-us-broke-promise-offinancial-aid> (on file with the *Columbia Law Review*) ("[T]he [IRA] repealed the racial criteria for those programs . . . and substituted race-neutral terms instead.").

254. See *supra* note 30 and accompanying text.

255. § 22006, 136 Stat. at 2021 (2022) (discussing the availability of a \$3.1 billion fund to provide payments to and loans for "distressed borrowers").

256. *Id.* § 1006.

257. See *id.* § 1006(e) (making USDA assistance accessible to "farmers, ranchers, or forest landowners determined to have experienced discrimination prior to January 1, 2021" with no additional restrictions imposed).

III. EQUAL PROTECTION AND COLORBLIND CONSTITUTIONALISM

In the wake of a global pandemic and a renewed national reckoning with racial injustice, the United States continues to confront a fundamental paradox: how to remedy centuries of systemic racism within a constitutional framework that purports to guarantee equal protection. This tension crystallized dramatically in *Wynn v. Vilsack*,²⁵⁸ a 2021 federal district court decision that enjoined implementation of section 1005 of the ARPA.

This Part examines how the rhetoric and jurisprudence of colorblindness have constrained Congress's ability to enact race-conscious relief programs, particularly those designed to address not only material losses but also the dignitary harms endured by Black farmers after decades of systemic exclusion and discrimination. Section III.A begins by analyzing colorblind constitutionalism as a limiting framework, showing how this ostensibly neutral approach frequently obscures the ongoing effects of past discrimination and impedes efforts to dismantle structural inequities. Section III.B then applies this framework to *Wynn*, illustrating how the court's reasoning exemplifies these doctrinal constraints and reflects deeper ideological commitments embedded in contemporary equal protection jurisprudence.

Taken together, these sections illuminate the complex legal terrain in which race-based remedies must operate—a terrain shaped by evolving equal protection doctrine, the contested legacy of colorblindness, and the urgent need for more equitable policy solutions in agriculture and beyond. More fundamentally, they reveal how current interpretations of equal protection doctrine may paradoxically entrench, rather than dismantle, racial hierarchy and economic concentration. While this Part offers a descriptive and critical analysis of existing doctrine, it also points toward the need for alternative constitutional frameworks that more effectively advance racial justice, a project that warrants exploration in future work.

A. *The Critique of Colorblind Constitutionalism*

The Constitution's guarantee of equal protection is a foundational principle of American democracy. Yet, the nation's long history of racial discrimination—particularly in agriculture—poses a constitutional paradox: How can the government remedy entrenched racial injustice without violating the very principle intended to prevent it? This section takes up that question by examining how colorblind constitutionalism has emerged as a limiting framework that often impedes, rather than advances, racial justice within the existing constitutional order.

1. *Addressing Racial Discrimination Within Equal Protection.* — The meaning of the Equal Protection Clause of the Fourteenth Amendment

258. 545 F. Supp. 3d 1271, 1295 (M.D. Fla. 2021).

has evolved significantly since its ratification in 1868.²⁵⁹ Originally intended to shield Black Americans from discriminatory state laws in the aftermath of slavery,²⁶⁰ the clause has become a central tool in challenges to discrimination across multiple domains.²⁶¹ That evolution, however, has brought into sharp relief a tension between two competing constitutional visions: the aspiration for a colorblind society and the imperative of remedying historical racial injustice.²⁶² The colorblind ideal maintains that equality is best achieved by eliminating all legal consideration of race.²⁶³ Proponents claim fidelity to the clause's text, which prohibits any state from denying "to any person within its jurisdiction the equal protection of the laws."²⁶⁴ But a strictly formal reading of this provision obscures the enduring effects of past discrimination and the structural inequalities that persist across American life. Achieving substantive equality often requires race-conscious interventions in areas such as education, employment, government contracting, and voting.²⁶⁵ Such measures acknowledge that

259. See William D. Araiza, *Enforcing the Equal Protection Clause: Congressional Power, Judicial Doctrine, and Constitutional Law* 63–83 (2015) (documenting the development of the tiers of scrutiny framework and the Supreme Court's "formalistic" application of strict scrutiny to all legislative uses of racial categories); Tina Fernandes Botts, *For Equals Only: Race, Equality, and the Equal Protection Clause* 53–64 (2018) (describing the Supreme Court's shift from thinking about equal protection through a social equality framework to a legal equality framework).

260. See, e.g., Foner, *Unfinished Revolution*, *supra* note 91, at 256–58 (explaining that the Equal Protection Clause was designed to protect the civil rights of people fleeing from enslavement during Reconstruction); William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* 115–19 (1988) (detailing the congressional intent to safeguard Black Americans from discriminatory state laws); see also Cong. Globe, 39th Cong., 1st Sess. 2766 (1866) (statement of Sen. Howard) (introducing the Equal Protection Clause as extending "life, liberty, and property" and "the equal protection of the laws" to Black Americans).

261. See, e.g., *Romer v. Evans*, 517 U.S. 620, 635 (1996) (invalidating a state constitutional amendment targeting gay and lesbian individuals); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 435 (1985) (striking down a zoning ordinance for discriminating against people with intellectual disabilities); *Reed v. Reed*, 404 U.S. 71, 74 (1971) (invalidating a state law giving preference to men over women as estate administrators); *Graham v. Richardson*, 403 U.S. 365, 376 (1971) (striking down state laws denying welfare benefits to resident aliens).

262. See, e.g., Jed Rubenfeld, *Affirmative Action*, 107 *Yale L.J.* 427, 444–54 (1997) (exploring the constitutional tension between colorblindness and corrective justice).

263. See, e.g., R. Richard Banks, *Race-Based Suspect Selection and Colorblind Equal Protection Doctrine and Disclosure*, 48 *UCLA L. Rev.* 1075, 1112 n.147 (2001) ("One could imagine a colorblind society in which people 'notice' race but do not accord it any special significance But in such a society, in which race serves no deep purpose, one might expect race to eventually fade away.").

264. U.S. Const. amend. XIV, § 1; see also Michael B. Rappaport, *Originalism and the Colorblind Constitution*, 89 *Notre Dame L. Rev.* 71, 74–81 (2013) (summarizing Justice Antonin Scalia's and Justice Clarence Thomas's originalist accounts of the colorblind Constitution).

265. See, e.g., *Crenshaw*, *supra* note 240, at 1377–78 ("[T]he attainment of formal equality is not the end of the story. Racial hierarchy cannot be cured by the move to facial race-neutrality . . .").

the playing field remains uneven and that true equal protection sometimes requires differentiated treatment to address historically rooted disadvantages. Beyond questions of fairness, the failure to confront racial inequity carries significant implications for the distribution of power in American society.²⁶⁶ When race-conscious policies are curtailed or invalidated, economic and political power becomes increasingly concentrated in the hands of a narrow elite. In agriculture, for instance, ignoring the legacy of racial exclusion reinforces a longstanding oligarchic structure that marginalizes farmers of color and consolidates resources among a select few.²⁶⁷ The case of *Wynn v. Vilsack* illustrates this constitutional tension.²⁶⁸ The USDA's debt relief program was designed to respond to a well-documented pattern of discrimination against minority farmers.²⁶⁹ Yet the program's race-conscious design provoked legal challenges rooted in the very equal protection doctrine meant to combat racial subordination.²⁷⁰ The litigation illustrates the difficulty of crafting effective remedies that both confront historical injustice and satisfy the legal demands of formal equality under strict scrutiny. It also raises broader concerns about how the law can acknowledge past harm without reproducing new forms of unequal treatment.²⁷¹ Ultimately, refusing to meaningfully address racial disparities merely preserves existing hierarchies. When structural inequalities remain unaddressed, those already entrenched in positions of influence continue shaping the rules to

266. See Lani Guinier & Gerald Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* 11–14 (2002) (arguing that race-conscious strategies are necessary to expose systemic inequities and democratize power); Derrick A. Bell, Jr., Comment, *Brown v. Board of Education* and the Interest-Convergence Dilemma, 93 *Harv. L. Rev.* 518, 523–24 (1980) (contending that remedies for racial inequality are adopted only when they converge with the interests of dominant groups); Crenshaw, *supra* note 240, at 1335 (“Because racism is intimately connected to both coercion and popular consciousness, the Critics’ failure to examine them undermines the utility of their critique in analyzing the oppression of Black people and in explaining domination and legitimation in society as a whole.”).

267. See Ashok K. Mishra, Gianna Short & Charles B. Dodson, *Racial Disparities in Farm Loan Application Processing: Are Black Farmers Disadvantaged?*, 46 *Applied Econ. Persps. & Pol’y* 111, 113 (2023) (discussing historical racially discriminatory practices in agriculture such as unequal USDA services and delayed loan processing that have restricted Black farmers’ access to credit and land).

268. 545 F. Supp. 3d 1271 (M.D. Fla. 2021).

269. *Id.* at 1275.

270. See *id.* at 1276–77 (“Plaintiff contends that . . . Section 1005 is unconstitutional because it violates his right to equal protection under the law.”); Foster & Austin, *supra* note 17, at 169–74 (examining, based on the lawsuits brought by White farmers, the challenges of creating legislation that will meet the standards of strict scrutiny, particularly those that target specific examples of past discrimination by the government).

271. See Foster & Austin, *supra* note 17, at 171 (noting that “pervasive evidence of continued disparity and strong legislative intent to aid the plight of Black farmers in America is not enough to outweigh courts’ hesitation to allow legislation that singles out Black farmers”).

their advantage, perpetuating exclusion and undermining the Constitution's promise of equal protection.

2. *The Historical Development and Contemporary Constraints of Colorblind Doctrine.* — The *Wynn* court's preference for race-neutral alternatives reflects a broader doctrinal trend known as "colorblind constitutionalism," a framework that began taking hold in the 1970s.²⁷² Cases such as *Regents of the University of California v. Bakke*²⁷³ and *City of Richmond v. J.A. Croson Co.*²⁷⁴ played a pivotal role in establishing the principle that all racial classifications—regardless of intent—trigger strict scrutiny.²⁷⁵ As a result, courts increasingly demand exhaustive evidence of intentional discrimination and proof that race-neutral alternatives are inadequate before upholding race-conscious remedies.²⁷⁶ This heightened evidentiary threshold has led to the invalidation of race-conscious remedial programs even when racial disparities are persistent and well-documented.²⁷⁷

272. For an overview of the rise of colorblind constitutionalism, see Ariela Gross, *A Grassroots History of Colorblind Conservative Constitutionalism*, 44 *Law & Soc. Inquiry* 58, 58–59 (2019) (providing an historical overview of colorblind constitutionalism and defining it as an ideology that shifted from a mid-twentieth-century tool to combat segregation and other discriminatory practices to a more conservative instrument in the 1970s and 1980s used to oppose race-conscious remedies such as affirmative action); see also, e.g., *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 237 (1995) ("The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it."); *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) ("Because these race-neutral alternatives exist, the government's use of race is unconstitutional.").

273. 438 U.S. 265, 319–20, 319 n.53 (1978) (plurality opinion) (Powell, J.) (holding that although universities "may make individualized decisions, in which ethnic background plays a part, under a presumption of legality and legitimate educational purpose," strict racial quotas are impermissible).

274. 488 U.S. 469, 507–08 (1989) (holding that a scheme requiring contractors to subcontract a fixed percentage of contracts to minority-owned businesses violated the Equal Protection Clause).

275. See *Bakke*, 438 U.S. at 290 (plurality opinion) (holding that all racial and ethnic classifications are subject to stringent examination regardless of whether individuals are part of a "discrete and insular minority [sic]" requiring extraordinary protection," because "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people" (internal quotation marks omitted) (first quoting *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938) (misquotation); then quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)).

276. See, e.g., *Croson*, 488 U.S. at 507 (holding that a plan fails the narrowly tailored prong when "there does not appear to have been any consideration of the use of race-neutral means to increase minority business participation"); *United States v. Paradise*, 480 U.S. 149, 171 (1987) ("In determining whether race-conscious remedies are appropriate, we look to several factors, including the necessity for the relief and the efficacy of alternative remedies . . .").

277. See *Croson*, 488 U.S. at 470–72 (requiring that facially race-conscious programs survive a "searching judicial inquiry" into the evidentiary basis for their remedial justification); Ian Haney-Lopez, *Blind Spot: How Reactionary Colorblindness Has Infected Our Courts—And Our Politics*, U.C. Berkeley L. (Mar. 29, 2011), <https://www.law.berkeley.edu/article/blind-spot-how-reactionary-colorblindness-has-infected-our-courts-and-our-politics> [<https://perma.cc/3F4F-5ZPV>] ("For decades, the Court

Under *Adarand Constructors, Inc. v. Peña*, any federal policy that classifies individuals by race is subject to strict scrutiny and presumed unconstitutional unless it serves a compelling government interest and is narrowly tailored to achieve that interest.²⁷⁸ In practice, this standard has made it exceedingly difficult for race-conscious remedial programs to survive judicial review. Courts typically uphold such programs only when three conditions are met: (1) The remedy addresses specific acts of prior discrimination, not generalized societal injustice;²⁷⁹ (2) the government demonstrates that the prior discrimination was intentional, rather than an incidental result of other socioeconomic dynamics;²⁸⁰ and (3) the government either directly committed or tacitly supported the discriminatory conduct.²⁸¹ Narrow tailoring further requires that the policy consider race-neutral alternatives and avoid both over- and underinclusion, lest they arbitrarily benefit or exclude certain groups.²⁸² This doctrinal preference for race-neutrality has made it increasingly difficult to implement targeted remedies for entrenched racial discrimination in sectors such as agriculture.²⁸³ One illustrative example is the USDA's post-*Pigford* attempt to address discrimination through administrative reforms, such as streamlining complaint processes and increasing diversity in local Farm Service Agency committees.²⁸⁴ Although these reforms were formally race-neutral, they failed to significantly reduce disparities in access to credit and assistance for minority farmers.²⁸⁵

condemned remedial measures on the ostensible ground that they constituted 'noxious' discrimination against whites.").

278. 515 U.S. 200, 234–35 (1995); see also *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (reaffirming that, under *Adarand*, all federal racial classifications trigger strict scrutiny and are valid only if narrowly tailored to a compelling interest).

279. *Croson*, 488 U.S. at 498.

280. *Id.* at 503. Statistical disparities can be used to help establish intentional discrimination. See *Aiken v. City of Memphis*, 37 F.3d 1155, 1163 (6th Cir. 1994) ("Thus, we conclude that the statistics presented here are probative enough to satisfy the City's burden of producing strong evidence that discrimination occurred in the Memphis Police and Fire Departments."); *United Black Firefighters Ass'n v. City of Akron*, 976 F.2d 999, 1011 (6th Cir. 1992) ("Where a gross disparity exists between the expected percentage of minorities selected and the actual percentage of minorities selected, then prima facie proof exists to demonstrate intentional discrimination in the selection of minorities to those particular positions.").

281. *Croson*, 488 U.S. at 492.

282. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2167–68 (2023) (striking down admissions program under the narrow-tailoring requirement because it was "overbroad" and "underinclusive").

283. See, e.g., *Foster & Austin*, *supra* note 17, at 176 ("Our current legal system does not provide a clear avenue to specifically redress past wrongs If our traditional understanding of strict scrutiny for racial classifications, reflected in current litigation, does not change, reparative legislation will face an uphill battle.").

284. See C.R. Action Team, 1997 Report, *supra* note 182, at 61–90 (recommending measures to "to improve workforce diversity and civil rights").

285. See Alyssa Sloan, Note, *Pigford v. Glickman* and the Remnants of Racism, 8 *Oil & Gas Nat. Res. & Energy J.* 19, 32 (2022) ("In 2020, the USDA approved loans for 37 percent

Similarly, the 2014 Farm Bill's provisions for "socially disadvantaged farmers or ranchers"²⁸⁶—while facially neutral—failed to account for the specific historical and structural barriers experienced by Black farmers, who have disproportionately suffered land loss, capital deprivation, and chronic exclusion from federal agricultural program over the past century.²⁸⁷

3. *The Limitations of Race-Neutrality for Racial Justice.* — In practice, race-neutral approaches often reproduce or deepen existing inequalities by failing to address the cumulative and group-specific nature of discrimination.²⁸⁸ In agriculture, these inequalities manifest through discriminatory lending practices, biased allocation of subsidies, and the intergenerational dispossession of land—each compounding over time.²⁸⁹ The result is a complex web of disadvantages that disproportionately affect farmers of color, impedes wealth accumulation, and restricts access to markets and capital.²⁹⁰ When a policy fails to account for these structural barriers, it contributes to the consolidation of land, wealth, and influence within an increasingly narrow group of large-scale agribusinesses and landowning elites. This entrenchment perpetuates exclusion and limits the ability of marginalized communities to participate meaningfully in agricultural markets and policymaking. In this context, race-conscious interventions are not only defensible but necessary for two principal reasons. First, they directly respond to the cumulative effects of historic

of Black applicants in contrast to 71 percent of white applicants for a program that would assist farmers paying for land, equipment, and repairs." (citing Archibald Browne, Frozen USDA Funds Yet Another Setback for Oklahoma's Black Farmers, NonDoc (Aug. 11, 2021), <https://nondoc.com/2021/08/11/frozen-usda-funds-yet-another-setback-for-oklahomas-black-farmers/> [<https://perma.cc/AT86-C372>])).

286. Agricultural Act of 2014, Pub. L. No. 113-79, § 7409(8)(A)(ii), 128 Stat. 649, 898–99 (adopting the definition from 7 U.S.C. § 2003(e) (2018)).

287. See Andrea Freeman, *The 2014 Farm Bill: Farm Subsidies and Food Oppression*, 38 Seattle U. L. Rev. 1271, 1283–84 (2015) (pointing out that facially neutral farm subsidies in the Farm Bill disproportionately go to White farmers because the subsidies prioritize agribusiness over small farms).

288. See Adewale A. Maye, *Econ. Pol'y Inst., The Myth of Race-Neutral Policy 3* (2022) <https://files.epi.org/uploads/270644.pdf> [<https://perma.cc/L63A-YZV2>] (highlighting that policies designed to uplift marginalized communities often fail for not recognizing the history and intersection of race and class).

289. See Daniel, *Dispossession*, supra note 86, at 17–18 (detailing discriminatory lending practices that severely restricted Black farmers' ability to own and retain land, which led to widespread dispossession and a drastic decline in Black-owned farms).

290. See, e.g., Sloan, supra note 285, at 27 ("Even today, despite historical improvement, Black Americans seeking farming opportunities are met with the same barriers their ancestors faced. Whether it's discriminatory lending practices or rising costs, these obstacles not only prevent minorities from seeking a career in farming but also prevent passing inheritable wealth to descendants." (footnote omitted) (citing Jillian Forstadt, 'Make Farmers Black Again': African Americans Fight Discrimination to Own Farmland, NPR (Aug. 25, 2020), <https://www.npr.org/2020/08/25/904284865/make-farmers-black-again-african-americans-fight-discrimination-to-own-farmland> [<https://perma.cc/M6RT-EJ4U>])).

and ongoing discrimination by tailoring remedies to the particular realities of the affected group.²⁹¹ For example, programs aimed at restoring Black-owned farmland can integrate targeted financial support, technical assistance, and land restoration mechanisms that acknowledge the unique history of Black land dispossession.²⁹² Second, race-conscious remedies can address the intersection of racial disparities with other forms of disadvantage—such as unequal access to credit, exclusion from agricultural networks, and implicit biases in program administration. By explicitly naming race, these interventions expose and mitigate the systemic forces that continue to marginalize minority farmers,²⁹³ something race-neutral policies are often ill-equipped to confront. The insistence on race-neutrality also imposes an impractical burden on lawmakers and policymakers. It demands that they redress racial disparities without directly referencing the racial dynamics that produced them, and without acknowledging the implicit and unconscious biases that shape institutional decisionmaking.²⁹⁴ These biases—though sometimes subtle—inform lending practices, hiring, enforcement, and resource allocation, even in the absence of overt discrimination.²⁹⁵ Race-neutral policies, by design, leave these dynamics unaddressed.

As disparities deepen, addressing them without invoking race becomes not only more difficult but counterproductive. In agriculture, the growing concentration of land and capital among large agribusinesses and wealthy landowners has only intensified existing inequalities.²⁹⁶ Attempts to remedy these imbalances through facially neutral strategies risk entrenching racially skewed distributions of wealth and power. Over time,

291. See Fitzgerald, *supra* note 235, at 97 (noting that the government “painstakingly lays out . . . numerous acts, reports, and instances that illustrate discriminatory practices at the USDA as recently as 2019”); One Million Black Families in the South Have Lost Their Farms, *supra* note 154 (“Half a million Black-owned farms across the country failed between 1950 and 1975. Black farmers lost about six million acres from 1950 to 1969. Black-owned cotton farms in the South almost completely disappeared, and in Mississippi from 1950 to 1964, Black farmers lost almost 800,000 acres of land . . .”).

292. See Sloan, *supra* note 285, at 29 (“Many Black farmers still face foreclosure due to the proven racial discrimination of the USDA. . . . Although the Farmers Home Administration (“FHA”) ended in 2006, multitudes of Black farmers lost their homes, land, and livelihood at the hands of FHA agents that denied financial benefits given to white farmers.” (citing Patrice Gaines, *USDA Issued Billions in Subsidies This Year. Black Farmers Are Still Waiting for Their Share*, NBC News (Oct. 28, 2020), <https://www.nbcnews.com/news/nbcblk/usda-issued-billions-subsidies-year-black-farmers-are-still-waiting-n1245090> (on file with the *Columbia Law Review*))).

293. *Id.* at 32 (discussing ongoing racially discriminatory practices by the USDA, such as lending practices that continue to make acquiring and keeping land difficult).

294. See, e.g., Buechler, *supra* note 96, at 245 (noting that “Agriculture Department programs are so entrenched in their discriminatory practices that the system needs a substantial structural remedy to open the farming market to black farmers”).

295. See *id.* (“[E]ven in the absence of intentional discrimination, systemic institutional processes and policies can perpetuate racial inequality.”).

296. See, e.g., Sloan, *supra* note 285, at 27 (“Before Black farmers experienced land dispossession in the twentieth century, one in seven farmers was Black.”).

these disparities become normalized within legal, economic, and cultural frameworks, making them harder to diagnose and disrupt without explicit racial analyses.²⁹⁷ Such normalization fosters the illusion that persistent inequities arise from neutral market forces or individual choices, rather than from state-sanctioned discrimination and policy failure.²⁹⁸ Left unchecked, this logic sustains a system in which the benefits of agricultural policy are disproportionately captured by a privileged few, while historically marginalized communities remain excluded. In so doing, it fuels the very oligarchic tendencies that racial justice efforts seek to dismantle.

4. *The Impact of White Supremacy in Legal Interpretations.* — Broader trends in legal reasoning reveal the enduring influence of White supremacy within American jurisprudence. This influence often surfaces not through overt racism, but through subtle assumptions that sustain racial hierarchies and institutional inequality. One of the clearest manifestations is the persistent presumption of White immunity from racial discrimination.²⁹⁹ Courts frequently display heightened skepticism toward discrimination claims brought by minority litigants, impose steep evidentiary burdens for such claims,³⁰⁰ and simultaneously adapt a more receptive posture toward so-called reverse discrimination claims brought by White plaintiffs—even in the absence of any historical pattern of racial subordination against them.

To be sure, White farmers, like all individuals, are entitled to bring claims of racial discrimination under race-based government programs. Antidiscrimination protections apply universally.³⁰¹ But the relative ease with which such claims are entertained by courts, compared to the substantial evidentiary burdens placed on historically marginalized groups, illustrates how White privilege continues to structure access to legal remedies. This asymmetry highlights a deeper truth: While individual White farmers may allege isolated discriminatory acts, they have not endured the structural, intergenerational exclusion and dispossession

297. See Gilbert C. Gee & Margaret T. Hicken, *Structural Racism: The Rules and Relations of Inequity*, 31 *Ethnicity & Disease* 293, 295–98 (2021) (discussing how racial norms are embedded into institutional structures).

298. See Foster & Austin, *supra* note 17, at 175 (“Legislators have highlighted that facially race-neutral legislation has not effectuated its purpose in recent attempts to address the past discrimination of the USDA against Black farmers . . . and that Congress’s ‘case-by-case efforts thus far have not done enough.’” (quoting 67 Cong. Rec. S1264 (daily ed. Mar. 5, 2021) (statement of Sen. Stabenow))).

299. See *Ames v. Ohio Dep’t of Youth Servs.*, 145 S. Ct. 1540, 1544–48 (2025) (holding that plaintiffs from majority groups alleging employment discrimination do not have to meet a higher burden of proof by providing “background circumstances” to support an inference of discrimination).

300. See Foster & Austin, *supra* note 17, at 171 (discussing the need for specific evidence of discriminatory practice and legislative intent for claims of discrimination).

301. See *Ames*, 145 S. Ct. at 1548 (holding that members of majority groups do not have to meet a heightened burden of proof in discrimination claims).

faced by Black and other non-White farmers. Yet the judiciary's willingness to treat these claims as equivalent—untethered from any historical context—underscores the legal system's ongoing entanglement with the logic of White supremacy.

This dynamic is reinforced by a judicial conception of racism that focuses narrowly on individual acts of malice rather than systemic, institutional, and structural subordination.³⁰² Courts commonly treat Whiteness as a neutral, categorical experience³⁰³—defaulting to the assumption that White individuals are racially unmarked and therefore less likely to experience discrimination, while simultaneously requiring extraordinary evidence to substantiate claims by minority communities.³⁰⁴ In so doing, the law reaffirms Whiteness as a position of normative privilege, one that insulates White claimants while subjecting claims of systemic racism to heightened scrutiny. In sectors such as agriculture—where wealth, land, and resources have long been concentrated in the hands of a racially homogeneous elite³⁰⁵—this framework impedes meaningful redistributive policies and entrenches patterns of exclusion.³⁰⁶

The presumption of White immunity also facilitates the mischaracterization of race-conscious remedial programs as impermissible reverse discrimination.³⁰⁷ This framing disregards the stark differences in historical experiences, access to opportunity, and material outcomes between racial groups. It equates attempts to repair centuries of systemic harm with discriminatory treatment against the historically dominant

302. See Crenshaw, *supra* note 240, at 1341–46 (arguing that U.S. antidiscrimination law has adopted an individualist model of racism that focuses on intent and malice while ignoring structural subordination).

303. See Cheryl I. Harris, *Whiteness as Property*, 106 *Harv. L. Rev.* 1707, 1715 (1993) [hereinafter Harris, *Whiteness as Property*] (collecting cases).

304. See Foster & Austin, *supra* note 17, at 169 (discussing the legal requirements to justify remedial policies based on race, particularly evidence of intentional discrimination in the past).

305. See W.E. Burghardt Du Bois, *The Souls of White Folk*, in *Darkwater: Voices From Within the Veil* 33, 34 (1920) (“I am given to understand that whiteness is ownership of the earth forever and ever . . .”); see also Lauren Crosser, *Those “Who Have No Interest in the Soil”: Poor Southern White People and Property in Antislavery Arguments for Homesteading*, 49 *Soc. Sci. Hist.* 340, 340–42 (2025) (tracing the persistent ideological assumption that White people have an “interest in property” to the Homestead Act of 1862); Harris, *Whiteness as Property*, *supra* note 303, at 1716 (“Even in the early years of the country, it was not the concept of race alone that operated to oppress Blacks and Indians; rather it was the *interaction* between conceptions of race and property that played a critical role in establishing and maintaining racial and economic subordination.”).

306. See Foster & Austin, *supra* note 17, at 171 (“Clearly, pervasive evidence of continued disparity and strong legislative intent to aid the plight of Black farmers in America is not enough to outweigh courts’ hesitation to allow legislation that singles out Black farmers.”).

307. See generally Ellen Messer-Davidow, *The Making of Reverse Discrimination: How DeFunis and Bakke Bleached Racism From Equal Protection* (2021) (arguing that the concept of “reverse discrimination” reframed the equal protection doctrine in ways that obscured structural racism and recast remedial race-conscious policies as discriminatory).

group. As a result, legal doctrines designed to promote equality are redeployed to protect entrenched privilege and obstruct structural redress.

This broader legal pattern poses challenging obstacles for policymakers seeking to articulate a compelling government interest in remedying racial injustice, a requirement made increasingly stringent by the Court's evolving equal protection jurisprudence. The challenges facing race-conscious programs—in cases such as *Fisher v. University of Texas at Austin*³⁰⁸ and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*³⁰⁹—illustrate the judiciary's growing insistence on narrow justifications for the use of race in public policy. In many cases, courts have downplayed or disregarded the broader structural and historical context that motivates these interventions.³¹⁰

Moreover, the judiciary's narrow understanding of what constitutes a "compelling interest" reflects the influence of White supremacist legal logic.³¹¹ Although courts acknowledge that remedying past discrimination or promoting diversity may qualify in theory, in practice they often demand near-impossible proof.³¹² Courts routinely require highly specific evidence linking the government entity implementing a race-conscious program directly to intentional past discrimination, while dismissing extensive structural evidence of racial inequality.³¹³ This constricted view

308. *Fisher v. Univ. of Tex.*, 579 U.S. 365, 388 (2016) (upholding the university's race-conscious admissions policy, finding that using race as a factor in admissions to create a diverse student body was narrowly tailored to achieve the compelling interest of educational diversity); *Fisher v. Univ. of Tex.*, 570 U.S. 297, 313–15 (2013) (holding that strict scrutiny applies to the use of race as a factor in admission policies).

309. 143 S. Ct. 2141, 2175 (2023) (holding that the inclusion of race in Harvard's admissions policies violated the Equal Protection Clause and Title VI of the Civil Rights Act).

310. See Joy Milligan, *Animus and Its Distortion of the Past*, 74 Ala. L. Rev. 725, 734 (2023) (noting the "extreme reading of the animus model," which treats discrimination as "temporally discrete" and implies that "once animus fades, or if it cannot be located in a particular moment or episode, any structural consequences need not or even cannot be addressed").

311. See Gotanda, *supra* note 241, at 55 (contending that the Court's colorblindness frames strict scrutiny so narrowly that race-conscious remedies are disfavored except in limited, court-mandated settings); Richard D. Kahlenberg, *New Avenues for Diversity After Students for Fair Admissions*, 48 J. Coll. & U.L. 283, 290 (2023) ("Technically, the Court did not come out and say that diversity is no longer a compelling interest; but for all intents and purposes, that is the effect of its new standard."); Reva B. Siegel, *The Supreme Court, 2012 Term—Foreword: Equality Divided*, 127 Harv. L. Rev. 1, 3–6, 62 (2013) ("*Fisher* represents a body of equal protection law that devotes special resources to majority claims it no longer provides to minority claims.").

312. See Buechler, *supra* note 96, at 245–46.

313. See, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493–94, 500 (1989) (holding that a municipality must demonstrate with a "strong basis in evidence" that it engaged in prior discrimination before enacting a race-conscious contracting program, rejecting reliance on generalized findings of societal discrimination (internal quotation marks omitted) (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277 (1986) (plurality opinion))); *Wygant*, 476 U.S. at 277–78 (invalidating a race-conscious layoff policy in which

of causality shields dominant institutions—such as the USDA—from accountability for their roles in perpetuating economic exclusion. It also prevents meaningful scrutiny of systems that consolidate land and capital within an elite minority, particularly in the agricultural sector.

B. *The Case of Wynn v. Vilsack*

Against this theoretical backdrop, *Wynn v. Vilsack* illustrates how colorblind constitutionalism constrains race-conscious remedial efforts. In June 2021, the U.S. District Court for the Middle District of Florida issued a preliminary injunction halting the implementation of section 1005 of the American Rescue Plan Act.³¹⁴ Scott Wynn, a White farmer from Florida, brought the lawsuit, alleging that the USDA’s debt relief program violated the Equal Protection Clause and the Administrative Procedure Act.³¹⁵ Wynn contended that the program engaged in de jure racial discrimination by distributing benefits and burdens on the basis of race.³¹⁶ In her ruling, Judge Marcia Morales Howard concluded that, even assuming the government had a compelling interest in supporting socially disadvantaged farmers, the program was not narrowly tailored to meet constitutional scrutiny.³¹⁷ The ruling exemplifies many of the theoretical problems with colorblind constitutionalism described above, demonstrating how abstract commitments to colorblindness generate concrete barriers to racial justice.

1. *The Statutory Framework and Misinterpretations of Social Disadvantage.* — Wynn’s central claim—that White farmers were categorically excluded from loan assistance—rests on a fundamental misreading of the statutory definition of “socially disadvantaged” as referenced in section 1005 of the American Rescue Plan Act.³¹⁸ That section adopts the definition provided in the Food, Agriculture, Conservation, and Trade Act of 1990, which defines socially disadvantaged farmers or ranchers as those subjected to racial or ethnic prejudice due to

the school board relied on “societal discrimination” rather than specific past discrimination by the board itself, emphasizing that remedial measures must target proven, intentional wrongs); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (plurality opinion) (Powell, J.) (concluding that general racial disparities cannot justify a race-conscious admissions program absent concrete evidence of past institutional discrimination); see also Vinay Harpalani, *Narrowly Tailored but Broadly Compelling: Defending Race-Conscious Admissions After Fisher*, 45 *Seton Hall L. Rev.* 761, 804 (2015) (“Violations of the Equal Protection Clause require proof of the intentional use of race; policies that merely have a disparate impact by race do not violate the Constitution.”).

314. *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1295 (M.D. Fla. 2021).

315. *Id.* at 1275.

316. *Id.*

317. *Id.* at 1281–82.

318. See American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 1005(b)(3), 135 Stat. 4, 13, repealed by Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 22008, 136 Stat. 1818, 2023; *Wynn*, 545 F. Supp. 3d at 1282–83 (reading “socially disadvantaged” as a “rigid, categorical, race-based qualification”).

their group identity.³¹⁹ In administering this provision, the USDA has identified several racial and ethnic groups—such as American Indians, Asians, Black Americans, Native Hawaiians, Hispanics, and Latinos—as commonly falling within this classification.³²⁰

While Black farmers and ranchers have been recognized as socially disadvantaged, given the USDA's well-documented history of discrimination throughout the twentieth century,³²¹ the statutory definition is not exhaustive. The inclusion of the phrase “but are not limited to” signals that the listed groups are illustrative rather than exclusive.³²² Accordingly, the statutory and regulatory framework does not preclude White farmers from being considered socially disadvantaged when evidence of racial or ethnic prejudice directed at them exists.³²³ This interpretation aligns with race-neutral equal protection principles, under which any individual, regardless of racial classification, may be subject to government-imposed racial discrimination.

Importantly, a colorblind interpretive approach does not deny the social reality of racialization in American life. Rather, it aims to eliminate normative assumptions about specific racial or ethnic groups from judicial reasoning. The relative absence of historical precedent for government-directed racial discrimination against White Americans³²⁴—arguably due to entrenched White supremacist cultural and political structures—does not foreclose the possibility that White individuals may be subjected to such discrimination in specific contexts.³²⁵

The USDA's American Rescue Plan Debt Payments FAQ affirms this broader view: “The Secretary of Agriculture will determine on a case-by-case basis whether additional groups qualify under this definition in

319. 7 U.S.C. § 2279(a)(6) (2018) (“The term ‘socially disadvantaged group’ means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.”).

320. 7 C.F.R. § 760.107 (2025); *id.* § 2500.105.

321. See *supra* note 182 and accompanying text.

322. Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA), 86 Fed. Reg. 28,329, 28,330 (May 26, 2021).

323. See Renée Johnson, Cong. Rsch. Serv., R46727, *Defining a Socially Disadvantaged Farmer or Rancher (SDFR): In Brief 4* (2021), https://www.congress.gov/crs_external_products/R/PDF/R46727/R46727.2.pdf [<https://perma.cc/3CL5-SXE8>] (“USDA defines SDFRs as belonging to the following race and ethnic groups: African Americans, American Indians, Alaskan Natives, Asians, Hispanics, Pacific Islanders, refugees, immigrants, and groups as determined by the Secretary of Agriculture.”); *supra* note 319.

324. See Harris, *Whiteness as Property*, *supra* note 303, at 1777–78 (“The relative economic, political, and social advantages dispensed to whites under systematic white supremacy in the United States were reinforced through patterns of oppression of Black[] and Native Americans.”).

325. See Daniel, *Dispossession*, *supra* note 86, at 51, 218 (acknowledging that benefits were often withheld from both African Americans and poor White persons).

response to a written request with supporting explanation.”³²⁶ This mechanism allows any farmer, including White farmers like Wynn, to seek recognition as socially disadvantaged upon submitting evidence of discrimination. Rather than pursue this avenue, however, Wynn elected to challenge the entire debt relief program on the flawed assumption that White farmers could never qualify as socially disadvantaged.

Judge Howard endorsed this mistaken reading, asserting—without support—that White farmers and ranchers do not fall within the statutory definition.³²⁷ Although there is scant precedent for successful discrimination claims by White farmers against the USDA,³²⁸ the categorical presumption that White farmers are inherently immune from racial or ethnic prejudice undermines equal protection principles. Indeed, such an interpretation distorts both the statutory framework and the constitutional doctrine it implicates, replacing individualized analysis with racial essentialism under the guise of neutrality.

2. *The Application of Strict Scrutiny and Its Doctrinal Constraints.* — Judge Howard’s skepticism toward both the government’s asserted compelling interest and the tailoring of section 1005 exemplifies how colorblind constitutionalism functions in practice. Addressing the legacy of racial discrimination by the U.S. government requires not only grappling with historic and ongoing patterns of exclusion but also examining how ostensibly race-neutral factors may perpetuate socioeconomic disparities. It also demands reckoning with the entrenchment of White supremacy in U.S. law and political economy.

The court applied strict scrutiny because section 1005 employs racial classifications to categorize socially disadvantaged farmers and ranchers for debt relief.³²⁹ Strict scrutiny involves two inquiries: whether the

326. American Rescue Plan Debt Payments FAQ, USDA, <https://www.farmers.gov/loans/american-rescue-plan/faq> [<https://perma.cc/H5F5-F79H>] (last updated May 21, 2021).

327. *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1275 (M.D. Fla. 2021).

328. See Alyssa R. Casey, Cong. Rsch. Serv., R46969, Racial Equity in U.S. Farming: Background in Brief 6–9 (2021), https://www.congress.gov/crs_external_products/R/PDF/R46969/R46969.1.pdf [<https://perma.cc/VRC6-2RY7>] (describing allegations of the USDA’s prior discriminatory practices against Black, Native American, and Latino farmers); U.S. Gov’t Accountability Off., GAO-12-976R, U.S. Department of Agriculture: Progress Toward Implementing GAO’s Civil Rights Recommendations 6 (2012), <https://www.gao.gov/assets/gao-12-976r.pdf> [<https://perma.cc/JL9E-G3FE>] (“USDA has worked to resolve large civil rights lawsuits . . . brought by farmers who are African American (*Pigford v. Glickman*), Native American (*Keepseagle v. Vilsack*), Hispanic (*Garcia v. Vilsack*), and women (*Love v. Vilsack*).”); Browning, *supra* note 96, at 11 (“Available data suggest no other minority group has experienced, in the last century, a loss of farm operations at a rate comparable to [Black individuals].”).

329. The Supreme Court in *Grutter v. Bollinger* explained that strict scrutiny aims to “smoke out” illegitimate uses of race” by ensuring that the legislative body is “pursuing a goal important enough to warrant use of a highly suspect tool.” 539 U.S. 306, 326 (2003) (internal quotation marks omitted) (quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion)).

government has a compelling interest in addressing the identified harm and whether the remedy is narrowly tailored to achieve that interest.³³⁰ While remedying past or present racial discrimination is “widely accepted as compelling,”³³¹ courts demand substantial evidence of intentional discrimination to justify race-based measures.³³² In this case, while Judge Howard acknowledged that “[i]t is undeniable—and notably uncontested by the parties—that USDA had a dark history of past discrimination against minority farmers,”³³³ she declined to find that the government had met its burden.³³⁴ Instead, she centered her analysis on whether the remedy itself was narrowly tailored to achieve the asserted compelling interest.³³⁵

The court concluded that it was not.³³⁶ To justify the program’s race-conscious design, the government had to show not only that it had been a “passive participant” in discrimination but also that prior remedial efforts were inadequate.³³⁷ Judge Howard found the USDA’s evidence on these points to be limited and conclusory.³³⁸ She further suggested that racial disparities in pandemic-related relief could plausibly be attributed to race-neutral factors, such as limited farming experience, lack of business acumen, or financial illiteracy, rather than racial discrimination.³³⁹ Citing the Supreme Court’s warnings about the insufficiency of “statistical disparities untethered to evidence of discrimination,”³⁴⁰ she concluded that the government had not demonstrated the requisite causal nexus between the identified harm and the race-based remedy.

The court further found that the program was overbroad.³⁴¹ Judge Howard emphasized that strict scrutiny “forbids the use even of narrowly drawn racial classifications except as a last resort,”³⁴² requiring the government to exhaust race-neutral alternatives and consider burdens on third parties.³⁴³ She characterized section 1005’s race-based eligibility

330. *Id.* at 323–33, 345.

331. See *Ensley Branch, NAACP v. Seibels*, 31 F.3d 1548, 1565 (11th Cir. 1994) (collecting cases).

332. See *id.* at 1565 (“Without an adequate showing of discrimination, the government’s assertion that affirmative action is necessary lacks credibility.”).

333. *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1279 (M.D. Fla. 2021).

334. *Id.* at 1281.

335. *Id.* at 1281–88.

336. *Id.* at 1288.

337. See *id.* at 1279 (internal quotation marks omitted) (quoting *Eng’g Contractors Ass’n of S. Fla. Inc. v. Metro. Dade Cnty.*, 122 F.3d 895, 911 (11th Cir. 1997)) (explaining that historical evidence does little to address the need for continued remediation though section 1005).

338. *Id.* at 1280–81.

339. *Id.* at 1281.

340. *Id.*

341. *Id.* at 1282.

342. *Id.* (internal quotation marks omitted) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 519 (1989) (Kennedy, J., concurring)).

343. *Id.* at 1287.

criteria as rigid and exclusionary, remarking: “[A] small White farmer who is on the brink of foreclosure can do nothing to qualify for debt relief. Race or ethnicity is the sole, inflexible factor that determines the availability of relief provided by the Government under Section 1005.”³⁴⁴ In her view, this categorical exclusion rendered the program insufficiently flexible and, therefore, constitutionally deficient.³⁴⁵

3. *Ideological Tensions and Problematic Assumptions.* — The court’s reasoning reflects a deeper ideological tension between race-conscious and class-based approaches to inequality within capitalist systems. Judge Howard suggests that race-based remedies are not narrowly tailored if they fail to account for similarly situated individuals harmed by class-based disadvantage. This framing risks collapsing racial discrimination into generalized economic hardship, weakening the legal recognition of racism as a distinct and historically rooted system of social subordination. Her analysis assumes that White individuals—such as “a small White farmer . . . on the brink of foreclosure”—are presumptively excluded from racialized harm.³⁴⁶ This assumption obscures the fact that White farmers could, in theory, demonstrate social disadvantage under the USDA’s criteria and reflects a problematic conception of Whiteness as racially neutral or beyond race. It implies that racial discrimination is cognizable only when validated through White experiences or judicial recognition of such experience.

Judge Howard also analogized section 1005 unfavorably to the minority business enterprise (MBE) program at issue in *Cone Corp. v. Hillsborough County*.³⁴⁷ In *Cone*, the Eleventh Circuit upheld the MBE program because it: (1) provided waivers for contractors unable to meet participation goals via race-neutral means; (2) excluded from benefits those not affected by discrimination; and (3) targeted its remedies to the most likely victims of discrimination.³⁴⁸ Judge Howard concluded that section 1005 lacked comparable flexibility.³⁴⁹ But the comparison is strained. Like the MBE program, section 1005 identified groups likely to have experienced USDA discrimination and allowed additional applicants to petition for inclusion.³⁵⁰ While the statute did not provide a waiver process for those outside the presumptively disadvantaged categories, its structure was not entirely inflexible and did not preclude White applicants from seeking individualized determinations.

344. *Id.* at 1283.

345. See *id.* at 1295 (finding that the plaintiff was likely to succeed in proving section 1005 unconstitutional).

346. *Id.* at 1283.

347. *Id.* at 1283–84 (citing *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 910 (11th Cir. 1990)).

348. *Cone Corp.*, 908 F.2d at 916–17.

349. *Wynn*, 545 F. Supp. 3d at 1283.

350. *Id.* at 1275.

To be sure, Judge Howard's concerns regarding potential over- or underinclusiveness are not without merit. She rightly noted the risks inherent in presuming discrimination solely from racial or ethnic classification—for example, that a Black farmer might receive relief absent individualized proof of discrimination,³⁵¹ or that a White farmer might be denied relief despite experiencing discriminatory treatment.³⁵² But these concerns are not unique to race-conscious programs; they reflect the perennial difficulty of designing remedial schemes that are both administrable and constitutionally sound. Rather than invalidate the program wholesale, such concerns could have justified implementing a more rigorous, evidence-based review process for individual claims—an approach the USDA pledged to undertake but which the court failed to meaningfully evaluate.³⁵³

Judge Howard further questioned whether the USDA's reliance on "administrative convenience"—specifically, the urgency of delivering relief during the COVID-19 pandemic—could justify its use of racial classifications.³⁵⁴ While expediency does not eliminate constitutional scrutiny, the court's analysis overlooked the extraordinary context in which section 1005 was enacted. Public health crises often exacerbate existing inequalities, and timely intervention is usually essential.³⁵⁵ By refusing to evaluate the adequacy of the USDA's individualized assessment process, the court treated the program's flexibility as speculative. In so doing, the court imposed a nearly insurmountable burden on race-conscious legislation, reaffirming strict scrutiny's rigid constraints and the judiciary's hostility toward remedial racial justice efforts.

4. *Broader Implications for Constitutional Interpretation and Democratic Governance.* — Beyond doctrinal implications, the decision reflects a broader institutional reluctance to confront the structural legacy of racial capitalism. By failing to acknowledge the historical and systemic nature of agricultural discrimination, the court risks reinforcing the very systems that produced those inequities. That judicial inaction not only impedes racial equity in agriculture but helps consolidate economic and political power among those historically favored by law and policy. Left

351. See *id.* at 1285 ("For example, a new SDFR who applied for and received the only farm loan he or she ever sought . . . is entitled to up to 120% debt relief despite never having faced any of the discrimination catalogued by the Government.").

352. See *id.* at 1286 ("It provides no remedy at all for an SDFR who was unable to obtain a farm loan due to discriminatory practices or who no longer has qualifying farm loans as a result of prior discrimination.").

353. See C.R. Action Team, 1997 Report, *supra* note 182, at 65.

354. *Wynn*, 545 F. Supp. 3d at 1286 (internal quotation marks omitted) (quoting *In re Birmingham Reverse Discrimination Emp. Litig.*, 20 F.3d 1525, 1548 (11th Cir. 1994)).

355. See generally Frank Curry, Gary Dymski, Tanita J. Lewis & Hanna K. Szymborska, Seeing Covid-19 Through a Subprime Crisis Lens: How Structural and Institutional Racism Have Shaped 21st-Century Crises in the U.K. and the U.S., 49 *Rev. Black Pol. Econ.* 77, 78–79 (2022) (explaining how public health and financial crises intensify existing racial and economic inequalities).

unaddressed, such dynamics sustain oligarchic structures that weaken democratic governance.

Wynn illustrates how colorblind constitutionalism constrains democratic efforts to address structural inequality. When courts routinely invalidate race-conscious programs designed to remedy documented patterns of exclusion, the result is not constitutional neutrality but the preservation of existing hierarchies under the guise of formal equality. If race-conscious remedies are constitutionally suspect while class-based strategies are preferred, policy responses will fail to redress racial injustice while obscuring its structural roots. This logic normalizes the view that persistent racial inequities stem from neutral market forces or individual failings, rather than state-sanctioned discrimination and policy failure. It maintains a system in which agricultural benefits flow disproportionately to a privileged few, while historically excluded communities remain marginalized.

The decision also demonstrates how narrow tailoring requirements function as structural barriers to racial remediation. The parallels between *Wynn* and other high-profile challenges to race-conscious programs—such as *Students for Fair Admissions*³⁵⁶—highlight a broader interpretive trend that constrains democratic responses to structural inequality. This pattern reflects not only doctrinal applications but also deeper ideological commitments that privilege formal equality over substantive justice and individual rights over collective remediation.

IV. IMPLICATIONS FOR FUTURE LEGISLATIVE EFFORTS

In the continuing struggle for racial equity in the United States, agriculture remains a critical site where historical injustice endures and systemic discrimination continues to shape the lives of farmers and rural communities. Recent efforts by the USDA Equity Commission mark a notable attempt to confront these entrenched disparities and chart a path toward greater fairness and accountability.³⁵⁷ The Commission's work offers important guidance for future legislative and policy interventions aimed at embedding equity more firmly across the federal government.

This Part examines the trajectory of recent equity efforts in agriculture through four interconnected lenses. Section IV.A reviews the USDA Equity Commission's comprehensive final report, analyzing its sixty-six recommendations and their potential to address systemic discrimination through structural rather than merely remedial approaches. Section IV.B documents how the Trump Administration's dismantling of equity programs illustrates the vulnerability of reform efforts to oligarchic capture, revealing the political economy dynamics

356. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023).

357. See USDA Equity Comm'n, *supra* note 44, at 8–9.

that sustain agricultural concentration. Section IV.C explores alternative policy frameworks emerging from the Commission's work, particularly its integration of race-conscious and class-based measures within constitutionally grounded approaches to democratic governance. Section IV.D distills lessons from both the Commission's achievements and the subsequent policy reversals to identify principles for designing more resilient equity initiatives that can withstand concentrated economic and political opposition. Together, these analyses demonstrate that meaningful agricultural reform requires not only thoughtful program design but also institutional safeguards capable of sustaining equity initiatives against oligarchic interference. The Commission's work provides a roadmap for embedding democratic accountability within agricultural policy, while its subsequent dismantling reveals the structural challenges that future reform efforts must anticipate and address.

A. *The USDA Equity Commission's Final Report*

Established in response to President Biden's 2021 executive order on advancing racial equity,³⁵⁸ the USDA Equity Commission was charged with reviewing the Department's policies and programs to identify and address factors contributing to historical discrimination.³⁵⁹ Over the course of two years, the Commission conducted a comprehensive review—soliciting public input, analyzing USDA programs, consulting historical reports and audits, and engaging with USDA leadership.³⁶⁰ In February 2024, the Commission released its final report.³⁶¹

The report contains sixty-six unanimously approved recommendations spanning the breadth of USDA's responsibilities, from agricultural subsidies to nutrition assistance and rural development.³⁶² Central themes include expanding access to USDA programs for underserved communities, eliminating language barriers, providing culturally appropriate technical assistance, supporting farmworkers and their families, embedding equity into climate-related initiatives, reforming procurement to benefit minority-owned businesses, resolving heirs' property challenges, and institutionalizing equity and accountability throughout the Agency.³⁶³ Notable recommendations include establishing

358. See Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

359. Meeting Notice, 87 Fed. Reg. 24,093, 24,093 (Apr. 22, 2022) (“USDA Equity Commission . . . will convene to continue its work reviewing USDA programs, services, and policies for the purpose of making recommendations for how the Department can improve access and advance equity.”).

360. USDA Equity Comm'n, *supra* note 44, at 1.

361. *Id.*

362. *Id.* at 21–80.

363. *Id.* at 8 (providing nine short-term and long-term recommendations to improve equitable access to and availability of USDA services and programs).

a pathway to citizenship for farmworkers,³⁶⁴ diversifying county committees to reflect the demographics of minority farmers and ranchers,³⁶⁵ broadening the definitions of “farmer” and “rancher” in the Census of Agriculture,³⁶⁶ and supporting legislation to hold USDA leadership accountable for implementing long-term equity reforms.³⁶⁷

Collectively, these recommendations confront longstanding disparities in agricultural policy and representation. The Commission explicitly acknowledges that many of these inequities are not new.³⁶⁸ Rather, they reflect persistent structural barriers that have resisted piecemeal reform. As Commission co-chairs Arturo Rodríguez and Ertharin Cousin emphasized, addressing these challenges will require USDA to overhaul its “customer-facing business processes” and confront the ongoing legacy of past discrimination.³⁶⁹

Although the USDA has previously attempted to confront racial discrimination through class action settlements and targeted policy interventions, such measures have often been reactive and narrow in scope.³⁷⁰ They have tended to address symptoms rather than systemic causes and have been vulnerable to legal and political backlash.³⁷¹ A stark example is the litigation that halted the debt relief program for socially disadvantaged farmers authorized under section 1005 of the American Rescue Plan Act.³⁷² In contrast, the Equity Commission calls for more proactive, comprehensive reforms that are both legally durable and capable of addressing structural inequities.

The urgency of these recommendations became tragically clear when President Trump assumed office in January 2025. Within days, a series of executive orders dismantled many of the Commission’s proposed equity-

364. *Id.* at 51–52 (recommending that the government provide a clear and accessible path for farmers to obtain U.S. citizenship).

365. *Id.* at 37–38 (“Despite the many past recommendations and attempts to alleviate the documented inequities associated with the County Committee’s election process and power, addressing County Committees continues to be a critical step in advancing equity in USDA’s programs and services.”).

366. *Id.* at 35 (“Direct the National Agricultural Statistics Service (NASS) to include the varying types of farmers and ranchers in the next Census of Agriculture to account for the nature of many traditional forms of how agriculture products are produced, sold, or exchanged.”).

367. *Id.* at 21–22 (“For all equity efforts outlined in this report and those currently taking place across USDA to be successful, there is a need to enact legislation and policy to ensure that continued work towards equity in programs and services is a priority of USDA leadership over time.”).

368. *Id.* at 2.

369. *Id.*

370. See *supra* notes 198, 328 and accompanying text (discussing the class action settlements).

371. See *supra* section III.A.3.

372. See *supra* note 250.

focused programs and institutional reforms.³⁷³ The targeted elimination of local food initiatives,³⁷⁴ coupled with the preservation and expansion of commodity subsidies,³⁷⁵ underscores how entrenched agricultural interests exploit political transitions to reinforce their dominance—undermining reforms aimed at equitable redistribution of resources.

B. *Dismantling Equity in the Trump Era*

The Trump Administration's agricultural agenda reveals the fragility of equity-focused reforms when confronted with entrenched oligarchic power. On January 20, 2025, President Trump signed an executive order titled "Ending Radical and Wasteful Government DEI Programs and Preferencing," mandating the termination of all equity-related programs within sixty days.³⁷⁶ This directive was followed by mass layoffs of nearly six thousand USDA employees, including researchers investigating discrimination, conservation specialists, and loan officers serving small and minority farmers.³⁷⁷ Far from a neutral policy shift, these actions

373. See Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 31, 2025) (revoking affirmative action requirements in federal contracting and ordering the elimination of DEI programs across agencies); Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 29, 2025) (directing federal agencies to terminate DEI programs and dismantle equity-related offices and policies); Exec. Order No. 14,148, 90 Fed. Reg. 8237 (Jan. 28, 2025) (rescinding multiple Biden-era executive orders, including those establishing equity and inclusion initiatives).

374. See Marcia Brown, *USDA Cancels \$1B in Local Food Purchasing for Schools, Food Banks*, Politico (Mar. 10, 2025), <https://www.politico.com/news/2025/03/10/usda-cancels-local-food-purchasing-for-schools-food-banks-00222796> (on file with the *Columbia Law Review*) (reporting that USDA cancelled more than \$1 billion in local-food purchasing programs for schools and food banks, effectively eliminating federal support for those initiatives); Lisa Held, *USDA Cancels More Support for Regional Food Systems*, Civ. Eats (July 15, 2025), <https://civileats.com/2025/07/15/usda-cancels-more-support-for-regional-food-systems/> [<https://perma.cc/LST6-LNVC>] (reporting the cancellation of key regional food programs and noting concerns about reduced support for local supply chains and community-based agriculture).

375. See Press Release, Farm Serv. Agency, USDA, *USDA Expediting \$10 Billion in Direct Economic Assistance to Agricultural Producers* (Mar. 18, 2025), <https://www.fsa.usda.gov/news-events/news/03-18-2025/usda-expediting-10-billion-direct-economic-assistance-agricultural> [<https://perma.cc/MMH9-KKVL>] [hereinafter Press Release, Farm Serv. Agency, *Expediting \$10 Billion*] (implementing large, direct payments under the Emergency Commodity Assistance Program for commodity producers); Press Release, Farm Serv. Agency, USDA, *USDA Announces 2025 Enrollment Periods for Crop and Dairy Safety-Net Programs* (Jan. 13, 2025), <https://www.fsa.usda.gov/news-events/news/01-13-2025/usda-announces-2025-enrollment-periods-crop-dairy-safety-net-programs> [<https://perma.cc/Y5C5-EQRK>] (noting the continued operation of Agriculture Risk Coverage, Price Loss Coverage, and Dairy Margin Coverage safety-net programs for 2025 crop and dairy producers).

376. Exec. Order No. 14,151, 90 Fed. Reg. at 8339.

377. See Press Release, USDA, *USDA Status on Workforce Litigation* (Mar. 11, 2025), <https://www.usda.gov/about-usda/news/press-releases/2025/03/11/usda-status-workforce-litigation> [<https://perma.cc/C82C-N9H3>] (acknowledging that probationary employees were terminated in February 2025 and later reinstated with back pay following

represent a deliberate consolidation of oligarchic control: the dismantling of institutional capacity to identify and remediate systemic inequities, ensuring that the state once again privileges dominant agricultural producers.³⁷⁸

The USDA Equity Commission's call to "[i]nstitutionalize equity" and "accountability" proved prophetic.³⁷⁹ Without structural safeguards, equity initiatives remained vulnerable to capture and reversal by oligarchic interests. Under President Trump, programs supporting local food systems, small farmers, and historically marginalized communities were systematically gutted or frozen, while billions in subsidies continued to flow to the largest commodity producers.³⁸⁰ The Administration canceled both the \$1.13 billion Local Food Purchase Assistance Program and the Local Food for Schools Cooperative Agreement Program,³⁸¹ even as it announced \$10 billion in direct payments exclusively for traditional commodity crops.³⁸² Because these payments were calculated by acreage, they inherently advantaged large-scale agribusinesses.³⁸³ In this way, oligarchic power reasserted itself through the selective allocation of state

litigation); Sky Chadde, *Newly Reinstated USDA Employees on Edge as More Layoffs Loom*, *AgDaily* (Mar. 27, 2025), <https://www.agdaily.com/insights/reinstated-usda-employees-on-edge-as-more-layoffs-loom> (on file with the *Columbia Law Review*) (noting that roughly 6,000 USDA staff were fired in February 2025, including specialists working on conservation, equity, and farm loan programs); Katie Langin, *USDA Ordered to Reinstate Nearly 6000 Fired Workers*, *Science* (Mar. 6, 2025), <https://www.science.org/content/article/usda-ordered-reinstate-nearly-6000-fired-workers> (on file with the *Columbia Law Review*) (reporting on a court order requiring USDA to reinstate thousands of employees terminated en masse).

378. See Daniel, *Dispossession*, *supra* note 86, at 248 (pointing to the pattern of USDA privileging White farmers, as in 1981 when 10% of the largest farmers took almost half of available USDA funds).

379. *USDA Equity Comm'n*, *supra* note 44, at 21.

380. See, e.g., Kevin Hardy, *USDA Cuts Hit Small Farms as Trump Showers Billions on Big Farms*, *Wash. St. Standard* (Apr. 6, 2025), <https://washingtonstatestandard.com/2025/04/06/usda-cuts-hit-small-farms-as-trump-showers-billions-on-big-farms/> (on file with the *Columbia Law Review*) (explaining that the Trump Administration cut \$1 billion from local food programs while expediting \$10 billion in payments to commodity farmers); Annie Ma, *USDA Ends Program that Helped Schools Serve Food From Local Farmers*, *AP News*, <https://apnews.com/article/school-lunch-usda-trump-c1485f824573913fe9a734bbf1273e26> [<https://perma.cc/CZX4-J7AR>] (last updated Mar. 12, 2025) ("The U.S. Agriculture Department is ending two pandemic-era programs that provided more than \$1 billion for schools and food banks to purchase food from local farmers and producers.").

381. Aimee Picchi, *USDA Cancels \$1 Billion in Funding for Schools and Food Banks to Buy Food From Local Suppliers*, *CBS News*, <https://www.cbsnews.com/news/usda-cancels-local-food-purchasing-food-banks-school-meals> [<https://perma.cc/W8B9-T2KP>] (last updated Mar. 13, 2025).

382. See Press Release, *Farm Serv. Agency, Expediting \$10 Billion*, *supra* note 375 (explaining that the USDA is issuing \$10 billion in funds to help large agriculture producers mitigate the impacts of increased input costs and falling commodity prices).

383. See *id.* ("[E]conomic relief payments are based on planted and prevented planted crop acres for eligible commodities for the 2024 crop year.").

resources, reinforcing concentration while erasing the policy gains of equity-centered reform.

The Administration's funding decisions further reveal the oligarchic logic underlying U.S. agricultural policy. While small farmers like Thomas Eich in Indiana received just \$160,³⁸⁴ large commodity producers secured substantial bailouts.³⁸⁵ This approach directly contravenes the USDA Equity Commission's recommendations for supporting limited-resource and historically underserved farmers. The cancellation of the \$3.1 billion Partnerships for Climate-Smart Commodities program further illustrated this selective approach.³⁸⁶ Organizations like Pasa Sustainable Agriculture, which had been assisting two thousand farmers across fifteen states in adopting sustainable practices, saw their funding terminated midstream, forcing layoffs and program shutdowns.³⁸⁷

The Administration's restructuring of USDA priorities exemplifies a hallmark of oligarchic governance: the capture of public institutions to advance concentrated private interests at the expense of democratic accountability and public welfare. By eliminating research capacity—particularly within the Economic Research Service and the Agricultural Research Service³⁸⁸—the Administration suppressed independent analysis

384. Ayurella Horn-Muller, *Trump Radically Remade the US Food System in Just 100 Days*, *Grist* (May 2, 2025), <https://grist.org/food-and-agriculture/trump-usda-food-system-agriculture-first-100-days/> [<https://perma.cc/R2DP-7R42>].

385. See Press Release, Farm Serv. Agency, *Expediting \$10 Billion*, *supra* note 375 (“ECAP assistance will be calculated using a flat payment rate for the eligible commodity multiplied by the eligible reported acres. Payments are based on acreage and not production.”).

386. See Press Release, USDA, *USDA Cancels Biden Era Climate Slush Fund, Reprioritizes Existing Funding to Farmers* (Apr. 14, 2025), <https://www.usda.gov/about-usda/news/press-releases/2025/04/14/usda-cancels-biden-era-climate-slush-fund-reprioritizes-existing-funding-farmers> [<https://perma.cc/D5PJ-WEYH>]; Lisa Held, *Updated: USDA Cancels Climate-Smart Commodities Program, but Some Projects May Continue*, *Civ. Eats* (Apr. 14, 2025), <https://civileats.com/2025/04/14/usda-cancels-climate-smart-commodities-program-but-some-projects-may-continue/> [<https://perma.cc/C2RQ-GJFG>] (“[T]he Climate-Smart Commodities Program freeze has caused an outsized amount of turmoil among farmers and organizations that support them due to the scale of the \$3.1 billion investment in 135 projects across the American farm landscape.”).

387. See Julie Grant, *Pennsylvania Farm Group Faces Layoffs Amid Federal Funding Freeze*, *Allegheny Front* (Feb. 28, 2025), <https://www.alleghenyfront.org/pennsylvania-farmers-pasa-sustainable-agriculture-federal-funding-freeze-climate-change/> [<https://perma.cc/DE7G-2WNB>]; Press Release, *Pasa Sustainable Agriculture Joins Lawsuit to Restore Federal Funding to Farmers*, (Mar. 20, 2025), <https://pasafarming.org/public-comments/pasa-sustainable-agriculture-joins-lawsuit-to-restore-federal-funding-to-farmers/> [<https://perma.cc/PC5B-C7DD>] (noting that, as of March 2025, Pasa is owed more than \$3 million and has furloughed over sixty staff members).

388. See *USDA Staffing Crisis: Research Agencies Face Steep Losses as Reorganization Advances*, *Nat'l Sustainable Agric. Coal: NSAC's Blog* (Sep. 17, 2025), <https://sustainableagriculture.net/blog/usda-staffing-crisis-research-agencies-face-steep-losses-as-reorganization-advances/> [<https://perma.cc/ETR7-RKFT>] (“USDA's research agencies—the National Agricultural Statistical Service (NASS), Economic Research Service

capable of exposing market concentration, environmental harms, or racial disparities.³⁸⁹ This tactic mirrors historical and contemporary patterns of oligarchic rule, from the antebellum plantation elite to modern petrostates, under which silencing critical knowledge production is central to maintaining dominance.³⁹⁰ In each case, the suppression of independent inquiry is not incidental but foundational to oligarchic rule, ensuring that the narratives legitimating concentrated power remain unchallenged.

C. *Alternative Approaches and Balanced Policy Design*

The USDA Equity Commission's work underscores the need for structural approaches to systemic discrimination.³⁹¹ Its recommendations move beyond litigation or narrow administrative fixes and instead propose durable institutional reforms—addressing heirs' property,³⁹² expanding nutrition assistance,³⁹³ and diversifying USDA county committees.³⁹⁴ Central to its framework is a dual focus on race-conscious and class-based measures: Set-asides for Black, Indigenous, female, and other historically marginalized farmers are paired with support for limited-resource and

(ERS), Agricultural Research Service (ARS), and National Institute of Food and Agriculture (NIFA)—have been hit particularly hard by recent staff losses and have significant cuts planned in the reorganization.”)

389. See *id.* (describing the consequences of funding cuts to independent research projects led by NASS and ARS).

390. See Sarah Repucci, *Freedom and the Media: A Downward Spiral*, in *Freedom and the Media 2019*, at 1, 2–5 (2019), https://freedomhouse.org/sites/default/files/202002/FINAL07162019_Freedom_And_The_Media_2019_Report.pdf [<https://perma.cc/HBN3-MCJF>] (corroborating cross-national trends consistent with oligarchic knowledge suppression); Douglas L. Mann, *When Facts Become Forbidden: The Past and Present History of Scientific Censorship*, 10 *JACC* 402, 402 (2025) (“However, throughout history, scientific research has often been subject to suppression, whether from religious doctrine, political ideology, or corporate interests, often with untoward consequences for public health.”); *Russia: Government vs. Rights Groups: The Battle Chronicle*, Hum. Rts. Watch (June 18, 2018), <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle> [<https://perma.cc/XR6N-BFMJ>] (“[T]he Kremlin has sought to stigmatize criticism or alternative views of government policy . . . includ[ing] new legal restrictions . . . on freedom of expression . . .”).

391. See USDA Equity Comm’n, *supra* note 44, at 30–31 (recommending policies to mitigate the effect of land fractionation on heirs’ ability to participate in USDA programs).

392. See *id.* at 14 (discussing how policies such as the 1933 Agricultural Adjustment Act (AAA) displaced many Black sharecroppers and tenant farmers by privileging large-scale farming operations and giving policymaking power to White farmers with no interest in supporting smaller and more diverse agricultural operations).

393. See *id.* at 42 (recommending that the USDA improve language access, create targeted outreach materials, and develop inclusive distribution programs and application sites to encourage farmworkers and their families to apply for nutritional support).

394. See *id.* at 37–39 (recommending diversity training, increased minority representation, and increased accountability to promote equity on county committees).

small-scale farmers more broadly.³⁹⁵ This design advances remedies for historic exclusion while building broader coalitions that enhance political and legal resilience. Programs like expanded nutrition assistance and targeted business support exemplify this principle, combining equity for historically marginalized communities with benefits for the broader population.

The Commission also embraces an interdisciplinary approach, drawing from sociology, history, and economics to inform policy design. For example, its proposals on heirs' property issues are rooted in the historical reality that discriminatory legal structures systematically stripped Black families of landownership, accelerating the decline of Black farming across the twentieth century.³⁹⁶ Similarly, its recommendations to improve access to nutrition assistance reflect sociological insights on how race, poverty, and food insecurity intersect in marginalized communities.³⁹⁷ By weaving these perspectives together, the Commission outlined a roadmap for equity that is both practical and historically informed.

At the same time, the Commission sought to institutionalize accountability. Its stated aim to "interrupt the perpetuation of any and all USDA discriminatory and unfair systems, operations, policies and actions"³⁹⁸ acknowledges that equity initiatives must be insulated from political or oligarchic capture. This insight reflects broader patterns in American agricultural history, throughout which concentrated land ownership and market control—from antebellum plantations to modern agribusiness—have been maintained through institutional capture and suppression of independent oversight.

By emphasizing structural reform, the Commission gestures toward a broader constitutional project. Eliminating barriers to land, credit, and markets aligns with efforts to dismantle the enduring "badges and incidents of slavery" embedded in modern agricultural institutions.³⁹⁹

395. See *id.* at 27–28, 32–33, 47–48. The Commission identified SNAP eligibility policies that disproportionately limited access to nutritional support for low-income and historically marginalized communities. These include restrictions "based on immigration status," denial of SNAP benefits to residents of Puerto Rico and other territories, a "prohibition on receiving SNAP benefits and food from the Food Distribution Program on Indian Reservations" simultaneously, the time limit for "unemployed people not living with dependent children," and "the ban on SNAP assistance for people with previous felony drug convictions." *Id.* at 47.

396. See Jordan M. Jennings, Note, *The Disappearing Act: How to Prevent the Decline of Black Farmers in the United States*, 12 *Ky. J. Equine Agric. & Nat. Res. L.* 325, 328–29 (2020) (detailing the systematic exclusion of Black farmers from the Reconstruction Era and throughout the twentieth century).

397. See *id.* at 343 (discussing programs designed to combat nutrition barriers and food insecurity in low-income communities).

398. USDA Equity Comm'n, *supra* note 44, at 9.

399. See William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 *U.C. Davis L. Rev.* 1311, 1376 (2007) ("[T]he badges and incidents of slavery . . . refer[] to the damaging effects of the institution of slavery itself

Likewise, the Guarantee Clause's commitment to republican government provides a lens for analyzing agricultural inequities: Concentrated control over land, markets, and governance produces anti-republican distortions in rural democracy.⁴⁰⁰ Programs that expand access for marginalized farmers, diversify decisionmaking bodies, and strengthen oversight can thus be understood not only as equitable policy but also as efforts to restore republican governance in contexts shaped by oligarchic capture.

This constitutional connection is meaningful even without a full doctrinal analysis. The Commission's proposals embody abolitionist logic in practice: dismantling structures of exclusion, restoring opportunities for historically marginalized communities, and embedding safeguards to prevent future entrenchment.⁴⁰¹ By recognizing the persistence of racialized economic hierarchy in agriculture, the Commission frames equity as a structural imperative rather than a discretionary policy choice.

Taken together, the Equity Commission's work illustrates the ongoing tension between oligarchic control and democratic accountability in American agriculture. While modern agricultural oligarchy relies on concentrated ownership, political influence, and control over knowledge production to maintain dominance, the Commission seeks to disrupt these dynamics through targeted reforms. Its proposals offer a model for redressing historic inequities while building resilience against political and legal challenges.

In practice, these recommendations underscore a key insight: Addressing systemic racial inequities requires more than programmatic interventions. It demands structural reforms that are responsive to the political economy of power—how the concentration of land, credit, and markets perpetuates exclusion—and that embed safeguards against future capture. By focusing on these structural levers, the Commission offers a

and the experience of African Americans under that system and thereafter.”); Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. Pa. J. Const. L. 561, 566 (2012) (“The Thirteenth Amendment promised the freed slaves ‘universal civil and political freedom.’” (quoting the Civil Rights Cases, 109 U.S. 3, 20 (1883))). As Professor Jennifer Mason McAward explained, “[t]he concept of the ‘badges and incidents of slavery’ is meant to assist Congress in identifying ways in which it can fulfill that promise and . . . to mark the outer boundaries of the Section 2 power.” *Id.* “To suggest that . . . the Thirteenth Amendment confers on Congress a broad power to legislate against discrimination generally overlooks this precise terminology and tends to devalue the immediate aftermath of the slave system, in which governments and individuals alike sought to achieve the de facto reenslavement of four million African Americans.” *Id.*

400. See Francesca L. Procaccini, *Reconstructing State Republics*, 89 *Fordham L. Rev.* 2157, 2167–68 (2021) (discussing how the Guarantee Clause enables the federal government to eliminate “aristocratic forms of government in the states” and drawing a distinction between aristocratic and republican forms of government).

401. See Robin West, *Toward an Abolitionist Interpretation of the Fourteenth Amendment*, 94 *W. Va. L. Rev.* 111, 139–40 (1991) (“There were, according to the abolitionists, at least two specific natural rights which the state is required to protect[:]. . . the right to physical security . . . [and] to have available to him the legal means to fashion a livelihood to ward off natural threats to survival.”).

roadmap for sustaining equitable policy in a sector historically dominated by oligarchic interests.

Future scholarship could explore these constitutional dimensions more directly, examining how the Thirteenth Amendment's abolitionist mandate and the Guarantee Clause's republican principles intersect with contemporary equity frameworks. Even without such an expanded analysis, the Commission's recommendations signal a significant step forward: They position equity as a systemic, structural, and constitutional imperative rather than a temporary or contingent policy preference.

In sum, the USDA Equity Commission represents one of the most ambitious federal efforts in recent memory to confront systemic discrimination in agriculture. Its recommendations combine historical insight, structural reform, and a dual emphasis on race- and class-conscious measures. By embedding equity within durable institutional mechanisms, the Commission provides a template for countering entrenched oligarchic power while advancing the constitutional ideals of democratic governance and racial justice. Its work illustrates that meaningful agricultural reform requires both thoughtful program design and the recognition that equity in agriculture is not merely a policy preference, but a constitutional and democratic obligation.

D. *Lessons, Challenges, and Implications for Future Policy Design*

The USDA Equity Commission's process and recommendations offer important guidance for future legislative and administrative efforts to advance equity. Its approach demonstrates the value of diverse representation in policymaking bodies, cross-sectoral collaboration, data-driven decisionmaking, and sustained engagement with affected communities.⁴⁰² By incorporating expertise in civil rights, economic disparity, and community-based advocacy, the Commission ensured that its recommendations reflected both lived experience and institutional knowledge while simultaneously enhancing their legitimacy and practical relevance. These principles underscore the importance of institutional architecture in shaping durable policy outcomes.

Despite the Commission's thoughtful design, its work highlights persistent challenges in translating equity initiatives into resilient programs. Legal and political opposition, fragmented stakeholder support, and the fragility of executive branch programs illustrate that

402. See USDA, USDA Equity Commission Charter 1 (2023) <https://www.usda.gov/sites/default/files/documents/usda-equity-commission-charter.pdf> (on file with the *Columbia Law Review*) (describing the purpose of the Commission as working to modify USDA programs and structures to “reduce [racial, economic, health, gender, and social] disparities and advance racial justice and equity for underserved communities”).

meaningful reform requires more than well-crafted policy.⁴⁰³ It demands institutional protections capable of withstanding coordinated resistance from entrenched interests. This observation reinforces the broader lesson that equity-focused programs must be structurally embedded within agencies and supported by legislative or constitutional foundations to avoid capture or reversal.

Several insights emerge for future policy design. First, reforms should integrate intersectional analyses that consider historical, racial, and socioeconomic disparities. Second, race-conscious measures should be paired with broader class-based initiatives to maximize political and legal viability. Third, accountability mechanisms, ongoing monitoring, and inclusive stakeholder engagement are essential to maintain transparency and prevent procedural capture. Collectively, these principles provide a blueprint for advancing equity beyond isolated or episodic reforms.

Building on the Commission's lessons for institutional design, it is equally important to recognize the role of community-led efforts in shaping equitable agricultural practices. Black- and Indigenous-led farming networks, community land trusts, and local food cooperatives demonstrate how equity can be operationalized at the ground level.⁴⁰⁴ These efforts support marginalized producers while fostering participatory governance, local economic resilience, and cross-community knowledge sharing. Integrating such bottom-up models with federal reforms can strengthen the durability and legitimacy of federal programs,

403. For critiques of the Final Report, see, e.g., Nichelle Harriott, HEAL Statement on USDA Equity Commission's Final Report, HEAL Food All. (Feb. 26, 2024), <https://healfoodalliance.org/heal-statement-on-usda-equity-commissions-final-report/> [<https://perma.cc/AJ96-R9C6PERMA>] (supporting the final recommendations but also noting that "there is still much work to be done to account for the 21.5 million people working in the food and agriculture system who are not adequately protected or equitably served by the USDA" and are continuously left behind); Michelle Hughes, Reflections on the Equity Commission's Final Recommendations to USDA, Nat'l Young Farmers Coal., <https://www.youngfarmers.org/2024/02/equity-commission-report/> (on file with the *Columbia Law Review*) (last visited Oct. 9, 2025) (noting frustration "with the obstacles and limitations that exist within the federal government to address [the] legacy" of USDA discrimination against BIPOC farmers); Kari Jo Lawrence & Cole Miller, USDA Equity Commission Report Is a Missed Opportunity for Indian Country, Tribal Bus. News (Mar. 2, 2024), <https://tribalbusinessnews.com/sections/opinion-op-ed/14630-usda-equity-commission-report-is-a-missed-opportunity-for-indian-country> [<https://perma.cc/Q3JW-QBZ2>] (criticizing the Commission's report for omitting "tribal trust land and jurisdictional issues" and failing to "hold a tribal consultation in the development of [the] report," as well as expressing concern over the USDA "tak[ing] a step back from its equity commitments").

404. See, e.g., Jessica Gordon Nembhard, *Collective Courage: A History of African American Cooperative Economic Thought and Practice* 2 (2014) (chronicling African American cooperative business ownership into the twenty-first century and its impact on collective economic agency and grassroots economic organizing); Leah Penniman, *Farming While Black: Soul Fire Farm's Practical Guide to Liberation on the Land* 24 (Michael Metivier ed., 2018) (providing a guide for African-heritage farmers and gardeners to contribute to the sustainable agriculture and food justice movements).

demonstrating that structural change and community-driven innovation are mutually reinforcing pathways toward a more democratic and equitable agricultural system.

From a constitutional perspective, the Commission's work illustrates how structural reform aligns with foundational principles of equality and democratic governance. Policies designed to dismantle systemic barriers reflect the Thirteenth Amendment's mandate to eliminate enduring badges and incidents of slavery, while efforts to enhance participation and access in federal programs resonate with the Guarantee Clause's commitment to republican government. Future legislative and administrative efforts can leverage these constitutional foundations to insulate reforms from partisan or oligarchic interference.

The Commission's recommendations also suggest important considerations for judicial review. Courts evaluating race-conscious remedies could adopt a historically informed standard that considers systemic and structural indicators of inequality, rather than requiring individualized proof of intentional discrimination. Such an approach would better reflect the nature of structural racism and the concentrated power dynamics that perpetuate inequity in agriculture. By acknowledging historical harms and systemic patterns, courts could better evaluate the capacity of remedies to shift power and redress long-standing disparities, aligning judicial evaluation with the broader goals of democratic governance.

Finally, the Commission's work makes clear that equitable policy design cannot be limited to visible symptoms of discrimination. Effective reform must address underlying institutional and economic configurations that enable oligarchic capture and perpetuate inequality. This includes ensuring sustained funding, embedding equity requirements within statutory and regulatory frameworks, and incorporating antitrust and governance reforms to reduce the concentration of power. Building durable coalitions among marginalized and small-scale producers is likewise essential to reinforce democratic accountability and prevent elite capture.

In sum, the USDA Equity Commission provides a model for translating historical analysis, interdisciplinary expertise, and inclusive process into actionable policy. Its lessons extend beyond agriculture, offering guidance for federal agencies seeking to advance equity while confronting entrenched economic and political power. Meaningful reform requires not only technical design but also a sustained institutional commitment to accountability, transparency, and the protection of vulnerable communities. By internalizing these lessons, future efforts can strengthen the capacity of public institutions to challenge concentrated power, expand equity, and serve the broad public interest.

CONCLUSION

This Essay has shown that struggles of Black farmers are not relics of the past but manifestations of enduring racial injustice embedded within the American agricultural system. From antebellum exploitation to the discriminatory practices of the twentieth and twenty-first centuries, institutions like the USDA have long reproduced patterns of exclusion that echo the Jim Crow era and continue to constrain the progress of Black farmers.

Pigford v. Glickman exposed these entrenched harms, offering partial relief while revealing the limits of litigation in remedying systemic discrimination. Those limits reemerged in the challenges to section 1005 of the American Rescue Plan Act, in which courts, guided by a formalist vision of equal protection, blocked race-conscious relief. The obstacles facing section 1005 demonstrate the tension between efforts to redress historic inequities and a constitutional landscape often hostile to acknowledging race.

The Inflation Reduction Act of 2022 attempted to overcome these challenges by shifting toward a broader, class-based criterion of “distressed” borrowers in addressing discrimination.⁴⁰⁵ While this approach expands eligibility and avoids some doctrinal pitfalls, it also underscores the ongoing conflict between formal neutrality and substantive equality—and the difficulty of achieving meaningful equity within structures shaped by racial hierarchy.

The USDA Equity Commission’s Final Report offers a promising avenue for addressing these ongoing issues. By recommending comprehensive reforms and integrating both race-conscious and class-based reforms, the report provides a model for creating more equitable systems. Its emphasis on diverse representation, proactive measures, and stakeholder engagement reflects a critical move toward addressing the multifaceted nature of discrimination. The Commission’s approach suggests that future policy efforts must balance historical accountability with contemporary needs, challenge the limitations of colorblind constitutionalism, and advocate for a more nuanced understanding of equality.

Framing these efforts through the Thirteenth Amendment and the Guarantee Clause strengthens their constitutional foundations. This approach has the potential to reshape how we conceptualize and address systemic discrimination across all areas of government, from agriculture to education, housing, and beyond. By grounding equity efforts in these fundamental constitutional principles, we can work toward a more just and equitable society that truly fulfills the promise of equal protection under the law.

405. Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 22006, 136 Stat. 1818, 2023.

Ultimately, while significant strides have been made in addressing racial injustices within U.S. agriculture, the journey toward true equity remains fraught with challenges. The ongoing struggle for racial justice highlights the need for policies that not only address historical wrongs but also adapt to the evolving landscape of discrimination. By embracing a more comprehensive, historically informed, and constitutionally grounded approach, policymakers can work toward a more just agricultural system that finally confronts and rectifies the enduring impacts of racial inequity.