

NOTES

HARMONY AT THE FARM: REDISCOVERING THE “COMMUNITY” IN COMMUNITY SUPPORTED AGRICULTURE

TABLE OF CONTENTS

INTRODUCTION	963
I. HISTORY AND GOALS OF THE CSA MOVEMENT	968
A. <i>Historical Perspectives on the CSA Movement</i>	968
B. <i>The Early Modern American CSA Movement and the Failure of the Community Farming Model</i>	970
II. ANALYSIS OF THE CURRENT DOMINANT BUSINESS ENTITY	
CHOICES FOR CSA FARMS	973
A. <i>Sole Proprietorship Dominance</i>	974
B. <i>Counterarguments in Favor of Sole Proprietorship Dominance</i>	976
C. <i>Other Business Entity Types and the “Core Group” Problem in the Modern CSA</i>	977
III. REORGANIZING CSA FARMS AS NONPROFITS: ANALYZING	
COSTS AND BENEFITS	979
A. <i>The Incorporation and Chartering Process for CSA Nonprofits</i>	980
B. <i>Profitability of the Nonprofit CSA</i>	983
C. <i>Utilizing Nonprofits for CSA Patron Base Integration</i> ..	985
1. <i>The Social and Economic Benefits of Incorporation for Patron Maximization</i>	985
2. <i>Addressing Counterarguments to Operating CSAs as 501(c)(3)s</i>	987

3. <i>The Cost of Nonprofits and Other Like Entities as a Nonissue</i>	990
IV. REORGANIZING CSA FARMS AS COOPERATIVES: ANALYZING COSTS AND BENEFITS	991
A. <i>Distinguishing Features of Cooperatives</i>	992
B. <i>Cooperatives as Social Enterprises</i>	994
C. <i>Economic Benefits and Profitability of Cooperatives</i>	995
1. <i>Taxation of Cooperatives</i>	995
2. <i>Utilizing Cooperatives for CSA Patron Base Integration and Informational Exchange</i>	997
CONCLUSION	999

INTRODUCTION

The United States is undergoing a “food revolution” that is changing consumers’ approach to buying and preparing food.¹ Cultural critics characterize this “revolution” as an ongoing phenomenon in which consumers have started seriously considering the environmental and economic ramifications of their food purchases and eating choices.² Food consumers in this movement, referred to in this Note as the “sustainable agriculture movement,” have started to appreciate the impacts that their individual food purchases have had on the global agricultural economy, and have responded in kind by buying more local and “environmentally friendly” foods, such as local or organic food products.³ Consumers might choose to purchase such foods for a variety of reasons, including the high quality of the food products, the environmentally sustainable natures of local or organic food systems, and the creation of a local food “community.” The community would gather to learn about food and attempt to learn where their food comes from, as well as whom in their community shares similar concerns about food and health.⁴

A farm that uses the Community Supported Agriculture (CSA) model is a farm that caters directly to a local or regional food system, and typically serves consumers interested in purchasing such food products.⁵ It operates as a direct marketing tool for small farms, allowing farmers to sell products to individual consumers face-to-face rather than selling products to an intermediary such as a grocery store.⁶ A farm’s patrons—also known as the farm’s “shareholders”—provide capital for the farm at the beginning of a growing

1. Andrew Martin, *Is a Food Revolution Now in Season?*, N.Y. TIMES, Mar. 21, 2009, at BU1.

2. *Id.*; see also Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POLY 45, 47-48 (2008); Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 DRAKE J. AGRIC. L. 7, 8-9 (1996).

3. See Coit, *supra* note 2, at 46, 48.

4. Martin, *supra* note 1.

5. Katherine L. Adam, *Community Supported Agriculture*, Nat’l Sustainable Agric. Info. Serv. (2006), <https://attra.ncat.org/attra-pub/viewhtml.php?id=262> [<http://perma.cc/ML2F-VX4U>].

6. *Id.* at 3, 11.

season and the farm distributes its harvest to shareholders throughout the growing season.⁷ This capital includes a salary for the farmers that take care of the farm, enabling the farmer to survive throughout the year regardless of the success of the growing season itself.⁸ Many CSAs are small, local enterprises with few shareholders relative to the number of agriculture consumers nationwide; despite the small nature of individual CSAs, however, CSAs across the country have enrolled thousands of shareholders in their food distribution programs.⁹

One explanation for the meteoric rise of the CSA farm format is that it attracts environmentally conscious consumers.¹⁰ CSAs purportedly provide valuable solutions to some of the environmental sustainability problems associated with conventional global food and agricultural systems,¹¹ precisely because of the local nature of the enterprise.¹² CSAs, unlike larger agricultural farming operations, do not require worldwide transportation to ensure that their products are sold; transactions take place at a farm or a local meeting place.¹³ CSAs are also intrinsically local in nature. Because CSAs serve a community, such as a single city or town, CSAs are more likely to attract consumers by word of mouth and by the promise of a community centered on obtaining local, organic foods.¹⁴ The CSA model is accordingly a prime vehicle for reforming the American food economy. The CSA has already demonstrated its potential for success. Indeed, in comparison to conventional agricultural operations, CSAs have experienced astronomical economic success in recent years.¹⁵

7. See *Community Supported Agriculture*, U.S. DEP'T OF AGRIC. (Dec. 12, 2014), <http://www.nal.usda.gov/afsic/pubs/csa/csa.shtml> [<http://perma.cc/FM6-PW2X>].

8. *Id.*

9. See DANIEL LASS ET AL., CTR. FOR INTEGRATED AGRIC. SYS., *CSA ACROSS THE NATION: FINDINGS FROM THE 1999 CSA SURVEY*, at i (2003), <http://cias.wisc.edu/wp-content/uploads/2008/07/csaacross.pdf> [<http://perma.cc/86AZ-MDTP>].

10. See Coit, *supra* note 2, at 46.

11. These concerns include mechanization of farming processes, the application of chemicals to plants and animals that provide raw food products, sustainability, and land stewardship. See *infra* Part I.A.

12. Martin, *supra* note 1.

13. *Id.*

14. See *infra* notes 30-31 and accompanying text.

15. See CTR. FOR INTEGRATED AGRIC. SYS., UNIV. OF WIS.-MADISON, *COMMUNITY SUPPORTED AGRICULTURE FARMS: MANAGEMENT AND INCOME*, RESEARCH BRIEF #68, at 2

CSAs, of course, are businesses that aim to produce profits for CSA farmers by providing quality food products to consumers. The CSA farming model has contributed to the success of both veteran farmers and those just beginning their farming careers, serving as both a stand-alone farming model and a contributor to existing farming operations.¹⁶ They act as "incubators" for farming operations because the CSA model, riding on the CSA movement,¹⁷ provides farmers with numerous opportunities to add consumers and to complement preexisting farming operations.¹⁸ By comparison, small conventional farming operations without using the CSA as such an "incubator" have declined in record numbers over the past several decades.¹⁹

The CSA, as an institutional farming format, thus has two competing goals: the business-oriented profit production beneficial for farmers, and the larger environmental goals that the founders of the CSA movement ascribed to the institution.²⁰ This Note proposes that CSAs can, and should, achieve both of these goals to become more successful than they could be by focusing on either goal individually. For CSAs to assume their roles as business incubators and catalysts for environmental and agricultural reform, CSAs must rely on community efforts and fully realize their potential as *social*

(2004), available at <http://perma.cc/V9TN-RZG3> (explaining how CSA farms are more profitable than conventional farming operations); Hamilton, *supra* note 2, at 14 (explaining CSAs' role in addressing the environmental concerns of pesticide usage, genetic modifications, and other problematic aspects of conventional food production methods).

16. CORRY BREGENDAHL & CORNELIA BUTLER FLORA, N. CENT. REG. CTR. FOR RURAL DEV., THE ROLE OF COLLABORATIVE COMMUNITY SUPPORTED AGRICULTURE: LESSONS FROM IOWA 17-18 (2006), <http://www.soc.iastate.edu/extension/ncrcrd/CSAReport-2006-LessonFromIowa.pdf> [<http://perma.cc/43VN-3WES>].

17. The "CSA movement" should be understood in the larger context of the sustainable agriculture movement. It refers to both the rise of popularity of CSA among American consumers, and the idea that farms should be community enterprises that embrace sustainable agricultural methods. See J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263, 266-67 & nn.2-4 (2000) ("The sustainable agriculture movement focuses on ways to promote natural resource stewardship in agriculture while still maintaining the economic profitability of farms and the social vitality of farming communities."); see also ELIZABETH HENDERSON & ROBYN VAN EN, SHARING THE HARVEST: A CITIZEN'S GUIDE TO COMMUNITY SUPPORTED AGRICULTURE 6, 18-19 (2007).

18. For example, a farmer can create a CSA as a local food analogue to a preexisting conventional agriculture operation. See Bregendahl & Flora, *supra* note 16.

19. See Lass et al., *supra* note 9, at 2.

20. See *infra* notes 42-45 and accompanying text.

institutions.²¹ Community building is an important aspect of the CSA because a large community base helps broaden the culture of local food purchasing, making the regionalized food system more visible.²² CSAs should thus serve as a locus for environmentally conscious consumers to engage in networking and activities that focus on safe, environmentally conscious food production.

The creation of such a community was vitally important in the initial stages of the American CSA, and the communitarian aspect of the CSA enterprise is vital to its existence today. The CSA should serve as a unit to effectively organize and educate consumers about the environmental and economic impacts of their food choices, enabling CSAs to affect consumer behavior enough to fundamentally alter the American food economy.²³ As such, this Note proposes that CSAs utilize existing corporate and tax law to enact communitarian, environmental, and economic changes to the American food economy.

Business entity choice is critical in helping the CSA farm succeed as a social and economic institution. For CSAs to succeed as business enterprises, the CSA must be legally structured in a way as to enable it to meet its social, economic, and environmental goals. Although a CSA's business entity choice might not seem important when considering the CSA's role in the sustainable agriculture movement, a CSA's business structure impacts *how* a CSA meets its economic (and complementary noneconomic) goals.²⁴ Implicit in this argument is that business entities are not merely practical legal

21. See STEVEN MCFADDEN & TRAUGER GROH, *FARMS OF TOMORROW REVISITED: COMMUNITY SUPPORTED FARMS—FARM-SUPPORTED COMMUNITIES* 82-83 (1997) (“[The original CSA concept was] that a group within a community ... would commit to support a farm for the entire year.” However, the idea seems to have faded in light of larger farming operations using subscriber-share systems similar to those of CSAs because that larger system provides farms with “what [they] need to survive.”).

22. See Hamilton, *supra* note 2, at 10-12; see also Gary Lamb, *Community Supported Agriculture: Can It Become the Basis for an Associative Economy?*, THE CTR. FOR SOC. RESEARCH, (1994), <http://thecenterforsocialresearch.org/wp-content/uploads/2013/11/csa.pdf> [<http://perma.cc/P9FP-NYXH>].

23. See *infra* Part I.B.

24. *Community Supported Agriculture*, UNIV. OF KY.—COOP. EXTENSION SERV. (2013), <http://www.uky.edu/Ag/NewCrops/marketing/csa.pdf> [<http://perma.cc/Q3PH-3LB5>]; see also Usha Rodrigues, *Entity and Identity*, 60 EMORY L.J. 1257, 1292-94 (2011) (explaining that business entity choice has important business implications because some business entities serve their ends by creating “community” as part of the product they sell).

devices, but are also tools that American lawmakers have purposefully designed to reinforce social movements like the agricultural revolution.

Existing literature scantily discusses CSAs in the business structure context. Most articles concerning CSAs discuss farming regulations, zoning regulations, or CSAs in the larger context of the “sharing economy.”²⁵ Understanding business formation is nevertheless important; such an understanding better helps farmers and lawyers work together to structure a CSA in a way that contributes significantly to its social, economic, and environmentalist goals. This Note will focus on business formation and entity choice for CSAs, as well as the interplay between the economic and noneconomic (social and environmental) aspects of business entity law that help CSAs attain each of their goals.

Part I will briefly recount the history of the CSA movement in the United States and abroad. This history is important in framing the economic and noneconomic goals of the CSA institution, and how current business entity choices fail to fulfill those goals. Part II will explain the predominant business structures CSA farms currently employ, and how these structures contribute to both the economic failures of small farms and the distancing of CSAs from their original role as community centers. This Part will also explain how the idea of “shared risk”²⁶ may help CSAs survive, but also how it prevents CSAs from becoming larger fixtures in the American food system without structures to offset potential harms to consumers. Parts III and IV examine how restructuring CSAs benefits both the CSA movement and the farmers who are leading the movement. Restructuring CSAs as nonprofits or cooperatives will balance the original goals of the CSA, which are critically linked to the mission

25. See JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES 1-21 (2012).

26. “Shared risk” is the idea driving most CSA farm ideologies of “community” today. It is the notion that shareholders in a farm share in the farmer’s risk of loss if a growing season goes awry by providing capital upfront that can help the farmer absorb losses should the growing season end in failure. Thomas Young, *Solidarity Through Community Supported Agriculture*, ORGANIC CONSUMERS ASS’N (Feb. 7, 2010), http://www.organicconsumers.org/articles/article_20383.cfm [<http://perma.cc/Y2CV-JH3B>]; see also MCFADDEN & GROH, *supra* note 21, at 82 (“[Members] would sign a commitment form that says ‘regardless of large or small harvests, through thick or thin, we will see that your farm’s budget is covered and that you will be able to survive, at least through this season.’”).

of the sustainable agriculture movement, and the long-term economic survival of the small American farm.

I. HISTORY AND GOALS OF THE CSA MOVEMENT

A. *Historical Perspectives on the CSA Movement*

The contemporary CSA movement began in Japan as the *Seikyou/Teikei* cooperative movement in the 1960s and 1970s.²⁷ The movement arose from increasing concerns over the growing usage of pesticides in modern farming practice, as well as widespread skepticism over the introduction of genetically modified foods in the global food economy.²⁸ The tenet holding these communities together was the notion of *Teikei*, which translates to “contract” in English; members of the movement voluntarily worked together to produce food in a traditional and environmentally sound manner.²⁹

The movement also provided a way for members of the community to support small-scale, local farmers who used traditional farming techniques when growing produce for the community.³⁰ One of the greatest impacts of the movement was that it promoted the survival of smaller farms that focused on producing organic fruits and vegetables.³¹ Focusing on the preservation of the small farm accordingly resulted in an increased awareness of land stewardship techniques in the consumer community.³² Perhaps one of the greatest effects of the *Teikei* movement, however, was the creation of a

27. See HENDERSON & VAN EN, *supra* note 17, at xv-xvi; see also Daman Prakash, *Development of Agricultural Cooperatives: Relevance of Japanese Experiences to Developing Countries*, RURAL DEV. & MGMT. CTR. (2003), http://www.uwcc.wisc.edu/info/intl/daman_japan.pdf [<http://perma.cc/X9TV-F7K9>] (explaining that the Japanese cooperative farm model, which mirrors the CSA model in the United States, started forming shortly after World War II).

28. Allison Wallace, *The Origins of CSA: Japan's Seikyou Movement Then and Now*, ME. ORGANIC FARMERS & GARDENERS ASS'N (2003), <http://www.mofga.org/Publications/MaineOrganicFarmerGardener/Spring2003/Seikyou/tabid/1510/Default.aspx> [<http://perma.cc/4TPU-H3VQ>].

29. *Id.*

30. See HENDERSON & VAN EN, *supra* note 17, at xv.

31. Prakash, *supra* note 27, at 11-15.

32. *Id.*; see also Megan Galey & A. Bryan Endres, *Locating the Boundaries of Sustainable Agriculture*, 17 NEXUS 3, 15-16 (2011) (discussing how the development of environmental stewardship practices is a legal and economic incentive for farmers under the Conservation Reserve and the Wetlands Reserve Programs).

new type of community—one whose members coalesced around the idea that farms provided *more* than healthy food.

Indeed, the farm inadvertently became a community institution for those involved in local food production.³³ Individuals in these communities prided themselves on their active work in the fields; the agricultural and environmental education they gained from experience with farmers and farming; and a greater appreciation for environmental stewardship and the protection of farmland.³⁴ The *Teikei* philosophy emphasized that individuals who benefited from farming activity must work on the farm as a way to ensure that the farm would survive and continue contributing healthy food products to the community, a practice later dubbed the “community farm” model.³⁵ This model, as later understood by the founders of the CSA movement, was supposed to create both a community centered on meaningful connections between local farmers and their patrons, while spreading awareness of the dangers of industrialized agriculture and expanding the *Teikei* farm community.³⁶

The *Teikei* model also provided a method for educating the general public about food and involving a growing number of people in food production. One of the most important legacies of the *Teikei* community farm is that it provided direction for the CSA movement in the United States and Europe.³⁷ A farming model similar to *Teikei* emerged in Switzerland,³⁸ and then in the United States, with the first American CSAs taking root in New England.³⁹ The idea of *Teikei* was instrumental in what would become the modern American CSA.⁴⁰ Like those who started the *Teikei* movement, the creators of the CSA in the United States intended for the farming

33. See HENDERSON & VAN EN, *supra* note 17, at xv.

34. See MCFADDEN & GROH, *supra* note 21, at 3-10.

35. See Wallace, *supra* note 28.

36. See HENDERSON & VAN EN, *supra* note 17, at 75 (“For Community Supported Agriculture to be more than just another direct marketing scheme, the growers and the members need to work together to build an institution they can share.”).

37. This partnership between farmers and CSA members is typically initiated by the creation of a “core group” of members and farmers. MCFADDEN & GROH, *supra* note 21, at 226.

38. See HENDERSON & VAN EN, *supra* note 17, at 258-59.

39. See *id.* at 7.

40. *Id.*

model to contribute to a greater appreciation for local food systems among consumers.⁴¹

B. The Early Modern American CSA Movement and the Failure of the Community Farming Model

The modern CSA, as imagined by the founders of the American CSA movement, produced local foods using environmentally friendly farming methods that relied on few, if any, agricultural chemicals and industrial harvesting processes.⁴² CSAs and farmers markets, which CSA farmers frequented heavily, began growing in number as Americans gained interest in locally grown organic foods that had little environmental impact.⁴³ The CSA farming model quickly took off, despite being relatively new.⁴⁴

In the United States, however, the focus of the CSA eventually shifted from connecting communities to the land to making small farms more profitable for farmers. This became especially true as the numbers of small American farms began declining during the mid to late twentieth century.⁴⁵ At first, few farms had substantial community bases, voluntary work programs, or working requirements for their members, despite the CSA's focus on bringing people closer to their food.⁴⁶ For farms that did have such requirements, shareholders needed to spend time working on the farm to receive their shares. When CSAs enacted these work-share requirements, many farms saw these initiatives fail; membership dropped significantly season after season.⁴⁷ This failure helps explain why many

41. MCFADDEN & GROH, *supra* note 21, at 73-74.

42. *See generally* Coit, *supra* note 2.

43. *See generally id.*

44. MCFADDEN & GROH, *supra* note 21, at xv. *Compare* HENDERSON & VAN EN, *supra* note 17, at 6 (between 1500 and 2000 CSA farms in existence in the United States in the early 2000s), *with* Elizabeth A. Murray, *Fertile Ground for a Social Movement: Social Capital in Direct Agriculture Marketing*, 14 (Jan. 2013) (unpublished Masters dissertation, University of South Florida), *available at* <http://perma.cc/9GXK-K68Z>.

45. *See* Lass, *supra* note 9, at 4 (explaining that as larger conventional agriculture operations began expanding, small farms saw a decline in economic productivity).

46. This lack of community participation in the American CSA starkly contrasted with the *Teikei* philosophy that bound Japanese community members to contribute to local food production. *See infra* Part I.A; *see also* HENDERSON & VAN EN, *supra* note 17, at 7.

47. *See, e.g.*, Laura B. DeLind, *Close Encounters with a CSA: The Reflections of a Bruised and Somewhat Wiser Anthropologist*, 16 *AGRIC. & HUMAN VALUES* 3, 7 (1999) (explaining that

CSA farms shifted their focus from community building to economic survival.⁴⁸ With fewer participants in CSAs, farmers often had no choice but to focus on their own economic vitality while competing with larger food retail operations such as supermarkets and grocery stores.⁴⁹

The community farm model that the CSA was to inherit from the *Teikei* movement should have made shareholders an essential part of the community *in addition* to its focus on local foods. A “core group” of shareholders should have been so intimately involved with the CSA to help determine what the CSA produced, who the farmers were, and how many shares to provide for the season in order to more fully assimilate the CSA into the local community.⁵⁰ Although there is no data establishing how many failed CSAs had such core groups, one conclusion is clear: the community farm model suffered failure in the late twentieth century.⁵¹ The failure of the work-share farm, however, did not necessitate the complete breakdown of the community aspect of the CSA; indeed, the creation of this community was also designed to help farms survive.⁵² CSAs nevertheless have redoubled their focuses on economic survival by asking their shareholder base to “share” risk of loss with the CSA farmer instead of sharing in the work.⁵³

shareholders view work requirements as an affront because it “force[s]” an “artificial community”).

48. See *infra* Part II.

49. See, e.g., MCFADDEN & GROH, *supra* note 21, at 84 (the expansion of CSAs from small farms into larger operations feeding over 600 families); E. Paul Durrenberger, *Community Supported Agriculture in Central Pennsylvania*, 24 *CULTURE & AGRIC.* 42, 43 (2002) (explaining how CSAs are starting to sell more than produce so as to “set [themselves] up as competitors in the retail food distribution system to which CSAs *were created as alternatives*”) (emphasis added).

50. The “core group,” as imagined by the founders of the American CSA movement, was a community group intimately involved with day-to-day CSA operations. The core group is an institutional part of the CSA that helps ensure both the CSA’s exposure to the community, as well as the CSA’s conformance to community expectations. See *infra* Part II.C; see also Lass, *supra* note 9, at ii.

51. MCFADDEN & GROH, *supra* note 21, at 226.

52. Recent studies demonstrate that shareholder bases find community building an important aspect of the CSA experience. See Joan M. Brehm & Brian W. Eisenhauer, *Motivations for Participating in Community Supported Agriculture and Their Relationship with Community Attachment and Social Capital*, 23 *S. RURAL SOC.* 94, 103-04 (2008) (finding, through an empirical study of two CSAs, that a desire to support the local food community is among the most important factors for why people participate in CSA agriculture programs).

53. ORSI, *supra* note 25, at 100, 564.

The “shared risk” aspect of the CSA farm is extremely important to the contemporary CSA enterprise and is now entrenched in the CSA farm model.⁵⁴ Sharing the risk of loss is a means by which farms can eliminate the unpredictability of seasonal business; a bad season could bring economic ruin upon a small farm.⁵⁵ The shared risk model helps eliminate the uncertainty that so heavily bears on farms’ economic viability—because every shareholder pays for an entire growing season upfront, the farmer is not stranded without income should the season end in disaster.⁵⁶ The shareholder community thus helps assure that a potential loss in a single season will result in neither economic ruin for the farm nor a complete turnover of a patron base come the following season.⁵⁷

Unfortunately, since the failure of the community farm model, CSAs have focused exclusively on economic survival at the expense of the community aspect of the farm.⁵⁸ Sharing the risk may be one way to bring the community and the farm closer together. Sharing risk, however, may not be enough to realize that objective, and is likely not enough to effectuate a broader appreciation of local sustainable agriculture. CSAs should take advantage of the current “food revolution” by embracing the *Teikei* philosophy⁵⁹ and helping to entrench food culture in American life by reformulating the idea of the American food community. Creating such a community could establish a consumer base, as well as affirm the CSA’s centrality in a new, more regionalized food system.

CSAs must creatively use existing social—and *legal*—frameworks to establish their presence in the new food system. By restructuring as nonprofit or cooperative businesses, business entity law would financially reward CSAs for the role they play in helping communities reimagine their food supply through reduced tax liability and a

54. See *Community Supported Agriculture (CSA) Resource Guide for Farmers*, N.C. STATE UNIV. COOP. EXTENSION, <http://growingsmallfarms.ces.ncsu.edu/growingsmallfarms-csaguide> [<http://perma.cc/V5SJ-4HMP>] (last visited Feb. 22, 2015).

55. This aspect of agricultural enterprise can be eliminated through reforming the CSA business structure. See *infra* Parts III-IV.

56. See Mark Cannella, *Risk Sharing Implications for Today’s CSA Farm*, UNIV. OF VT. EXTENSION (Feb. 2013), http://blog.uvm.edu/farmvia/files/2013/04/FBFS-002-2-13_CSA-Risk.pdf [<http://perma.cc/A8X9-8XYG>].

57. *Id.*

58. DeLind, *supra* note 47, at 7.

59. See *supra* notes 27-29 and accompanying text.

larger consumer base, allowing CSAs to pursue their economic and noneconomic goals at the same time. Indeed, such structures allow CSAs to simultaneously earn substantial profits (fulfilling their business goals) while pursuing environmentalist objectives through community support (fulfilling their noneconomic goals).

II. ANALYSIS OF THE CURRENT DOMINANT BUSINESS ENTITY CHOICES FOR CSA FARMS

CSAs are most often formed as one of five business entities: sole proprietorships, partnerships, for-profit corporations, nonprofit corporations, and cooperatives. The first three are the business entity forms for over 85 percent of all CSA farms.⁶⁰ Unlike the latter three entities, which are subject to numerous regulations that are difficult to navigate, sole proprietorships and partnerships are subject to few regulations and are relatively easy to create.⁶¹

Cooperatives and nonprofits also require their owners and investors to spread decision-making authority among several members—usually across a board of trustees.⁶² Lawmakers, however, have offset regulatory requirements for nonprofits and cooperatives with the numerous financial incentives attached to them, such as tax exemptions.⁶³ These incentives could be an economic boon for farms whose goals and missions comply with the relevant statutory provisions.⁶⁴ These corporate entities would also shield farmers from any tort or contract liability that stems from farming activity, again granting farmers some much needed economic stability while allowing them to pursue noneconomic objectives.⁶⁵ Despite the sole proprietorship’s and partnership’s ease of operation and relatively low maintenance costs,⁶⁶ the advantages offered by these entities do

60. See Lass, *supra* note 9, at 9.

61. See HENDERSON & VAN EN, *supra* note 17, at 128-30. Although Henderson suggests that most CSAs end up incorporating, statistical analysis of the CSA Survey demonstrates otherwise. See Lass, *supra* note 9, at 9.

62. LISA A. RUNQUIST, THE ABCS OF NONPROFITS 18-19 (2005).

63. See *infra* notes 116-20 and accompanying text; *infra* Part IV.C.1.

64. See *infra* Parts III.B, IV.C.1.

65. See *infra* Parts II-III.

66. See, e.g., HENDERSON & VAN EN, *supra* note 17, at 128-30; Doug O’Brien et al., *The Farmer’s Legal Guide to Producer Marketing Associations*, NAT’L AGRIC. L. CTR. (2005), http://nationalaglawcenter.org/wp-content/uploads/assets/articles/obrien_producermarketingbook.

not provide any of the incentives that would allow farmers to pursue multiple goals at once.

This Part will address why the sole proprietorship is currently the dominant business entity among CSA farms. It will also explain why the sole proprietorship is not the best business entity choice for a farmer in light of the connected social and economic factors that help CSAs become successful. Additionally, this Part will address how the shifting legal landscape helps farmers restructure proprietorships into new business entities at low cost. Because the sole proprietorship is the most popular business entity among farmers, this Part will mostly argue against forming CSA farms as such.

A. Sole Proprietorship Dominance

Considering farmers' aversion to "legalities,"⁶⁷ one can easily understand why over sixty percent of CSA farms are singly owned by the farmer and the farmer's family in sole proprietorship.⁶⁸ By avoiding the legal complexities that come with the corporation or cooperative,⁶⁹ the farmer legally controls the farm and makes all decisions regarding the farm's long term goals and daily operations.⁷⁰ The farmer can also control whatever happens on the land as a sole proprietor, even if the farmer only holds an easement to the land.⁷¹ The farmer's right as to the control of the CSA is, in essence, absolute.

The simple structure sole proprietorships affords farmers a great deal of autonomy in running a CSA because the farmer is not directly subordinate to any outside controlling body, such as a board of trustees. The farmer is not subject to any outside regulation of

pdf [<http://perma.cc/BBU2-CZEH>].

67. See HENDERSON & VAN EN, *supra* note 17, at 128.

68. See Lass, *supra* note 9, at 9; see also O'Brien, *supra* note 66, at 32.

69. See generally *Guide to Legal Issues in CSA Operations*, PA. ASS'N FOR SUSTAINABLE AGRIC. (2012), <http://www.pasafarming.org/resources/guide-to-legal-issues-in-csa-operations-1/view> [<http://perma.cc/J37A-7859>].

70. *Id.* at 2-3.

71. Several nonprofit organizations, such as the Trustees of Reservations in Massachusetts, own land in their own name and grant CSA easements to farmers. See, e.g., *Our Mission*, TRS. OF RESERVATIONS, <http://www.thetrustees.org/about-us/our-mission/> [<http://perma.cc/5Q69-AZPC>] (last visited Feb. 22, 2015); see also Lass, *supra* note 9, at 7 ("[A] significant proportion of CSA farms did not own the land they operated.").

the land besides typical land use regulations, even if the CSA has shareholders.⁷² Although the farmer's patrons may be called "shareholders," the term is a misnomer because patrons in this particular context do not control the direction or community of the farm, nor do they have a claim to ownership of the farm.⁷³ Rather, the farmer enjoys relative autonomy otherwise lacking from the structures of other business entities. Sole proprietorships also cost less to form, require little continuing compliance work or accountant oversight, and have historically been the entity of choice for farmers in both CSAs and conventional operations.⁷⁴

Despite these benefits, sole proprietorships fail to further the economic and noneconomic aspects of the CSA that help it thrive. The sole proprietorship entity is antithetical to the purpose of the CSA movement because, unlike nonprofits and cooperatives,⁷⁵ sole proprietorships do not have any inherent characteristics that help the farm further its extrinsic economic and social goals. Sole proprietorships do not have an inherent community built into them; indeed, the entire point of a sole proprietorship is that the owner and operator of the enterprise receives no outside input as to how to run the business.

Other entities fill those roles.⁷⁶ Nonprofits and cooperatives provide structures, such as boards of trustees, tax exemptions for charitable activities, and committees, which provide for community involvement and outreach.⁷⁷ In order for the CSA to assume an important role in the food revolution, it should become a community institution that not only ensures farmer survival, but does so in a way that maximizes outreach to the community and exposure to government incentives that aid farmers in participating in social enterprises. The original concept of the CSA centered on linking individuals more closely to land and the farmers who produce their

72. *Guide to Legal Issues in CSA Operations*, *supra* note 69, at 2-3.

73. *Id.*

74. O'Brien, *supra* note 66, at 32.

75. *See infra* Parts III-IV.

76. Sole proprietorships have no structure around which a community can coalesce; they have no way of helping build community where community building should be integrated into the structure of the business. *But see* HENDERSON & VAN EN, *supra* note 17, at 129 (advocating for CSAs to be sole proprietorships because of their legal simplicity).

77. *See infra* Parts III-IV.

food, in order to help educate the populace and expand the idea of sustainable agriculture.⁷⁸ The CSA farmer can still attain this goal and make a profit, and do so in a way that creates a community invested in food creation, local farms, and in finding and organizing activities and farming responsibilities among likeminded people.⁷⁹ Thus, CSAs should avoid sole proprietorships because both their social *and* economic ends⁸⁰ are best served by forming as either nonprofits or cooperatives.

B. Counterarguments in Favor of Sole Proprietorship Dominance

Of course, there are certain benefits ascribed to sole proprietorships and partnerships that do not translate well, if at all, to farms looking to become nonprofits or cooperatives. Farmers who want exclusive control over the direction of their farms may not want to allow others, especially inexperienced farmers, to have *any* control of the farm.⁸¹ Additionally, nonprofit and cooperative formations are far trickier to manage from a legal perspective,⁸² and are more expensive because they require regulatory compliance work that experienced attorneys must regularly perform.⁸³

The benefits of reorganizing CSAs into cooperatives and nonprofits far outweigh the benefits of remaining organized as a sole proprietorship or other for-profit entity. Importantly, farm profits and numbers, especially those organized as sole proprietorships, have failed in record numbers in the decades ending the twentieth

78. See MCFADDEN & GROH, *supra* note 21, at 82; Hamilton, *supra* note 2, at 15-16.

79. See Rodrigues, *supra* note 24, at 1292-93 (explaining that business entity choice should reflect the ends served by a business, especially when the business's product includes the creation of a community, like a CSA).

80. See *infra* Part III.

81. See, e.g., HENDERSON & VAN EN, *supra* note 17, at 76 (explaining that it is uncommon for CSA members to run a farm, and giving an account of a farmer who quit the CSA because the CSA's core group usurped too much of his autonomy).

82. See, e.g., O'Brien et al., *supra* note 66, at 28, 35-39 (explaining the applicability of securities law to nonprofit farms, and the resulting costs of regulatory compliance); see also *infra* Parts III-IV.

83. O'Brien et al., *supra* note 66, at 39. Importantly, however, little review of such regulatory compliance actually takes place. See Rodrigues, *supra* note 24, at 1269 ("Regulatory review of nonprofits is largely nonexistent." (citing Anup Malani & Eric A. Posner, *The Case for For-Profit Charities*, 93 VA. L. REV. 2017, 2038 (2007))).

century.⁸⁴ Although there is no count of the number of farms that have failed according to business entity type, farms that organize as nonprofits or cooperatives maintain a better security net to protect against failure than sole proprietorships do. Indeed, these business entity classifications contain boards, committees, and other individuals who might provide critical guidance in protecting against business failure.⁸⁵ CSAs occupy a marketing space that targets individuals who care about food systems, quality of food, and the environmental impact of their food consumption.⁸⁶ Creating a community not only ties patrons to the CSA but also encourages its members to seek out others who, like them, want to become part of a CSA community.⁸⁷ Nonprofits and cooperatives essentially contain a community because their management, which could include farmers, necessarily involves practices that serve a membership focused on sustainability.⁸⁸ That management, in itself, is already a community, or a “core group” as imagined by the founders of the modern CSA.⁸⁹

C. Other Business Entity Types and the “Core Group” Problem in the Modern CSA

Most CSAs that are not sole proprietorships are either for-profit corporations or general partnerships.⁹⁰ The remaining group of farmers includes the farms that have already become nonprofits and cooperatives (as well as a few other alternative entities).⁹¹ The problem facing all of these groups, like all types of CSAs, is that

84. See Lass, *supra* note 9, at 2.

85. See *infra* notes 151-52, 164-65 and accompanying text.

86. HENDERSON & VAN EN, *supra* note 17, at 18-21; Brehm & Eisenhauer, *supra* note 52, at 103.

87. Although CSAs do not seek a “type” of person, Henderson and Van En note that those who do become involved in the CSA tend to care deeply about environmental issues. As one farmer points out, “[farmers] meet concerned people who trust us enough to give us their money without contract or guarantees—we care about each other. We are into something mutually upbuilding.” HENDERSON & VAN EN, *supra* note 17, at 162 (quoting Timothy J. Laird, *Community Supported Agriculture: A Study of an Emerging Agricultural Alternative* 94 (1995) (unpublished Master’s thesis, University of Vermont)).

88. See *infra* Parts III-IV.

89. See *id.*

90. See Lass, *supra* note 9, at 9.

91. *Id.*

over 70 percent of them, both for-profit and nonprofit, have no “core group” of shareholders.⁹² Such core groups are helpful for CSAs as both social and economic enterprises; indeed, CSAs may not be able to reach their full potential without such core groups.⁹³

The purpose of a core group is to split responsibility for the CSA among producers and consumers.⁹⁴ Core groups are vital to maintaining a sense of community within the CSA; groups of concerned consumers help ensure that the organization understands both community and farm needs in areas like pricing, farming methods, crop selection, and land stewardship.⁹⁵ The core group also forces farmers and consumers to work more closely together, allowing consumers to better understand how their food is made and how it impacts their environment. Farmers will also be able to better understand what their community needs to learn about food and agriculture and will learn how to teach the community about farming. An active consumer community working with farms keeps farmers and shareholders bound together in the farming operation and helps to ensure that the CSA will benefit all those it is meant to serve.⁹⁶

The core group also helps members of the CSA feel involved in the production of their own food and their “community farm.” Community members support the farm directly by taking responsibility for some of its operations, including hiring workers and determining share schedules. This is how an isolated farm becomes entrenched in a community, which in turn supports the farm.⁹⁷ Without a core group, the CSA fails to provide much, if any, community for its shareholders because of the lack of entry points into CSA involvement.

Currently, cooperatives and nonprofits make up less than 15 percent of CSAs nationally, and most of these are located in New

92. *Id.* at ii (“The founders of the CSA movement stress the importance of core groups that actively involve the community in CSA farms. Only 28% of the CSA farms in the 1999 survey, however, reported having core groups.”).

93. *Id.*

94. HENDERSON & VAN EN, *supra* note 17, at 75-76.

95. *See id.* at 75-82; MCFADDEN & GROH, *supra* note 21, at 226.

96. HENDERSON & VAN EN, *supra* note 17, at 75-76.

97. *Id.* at 75-82.

England.⁹⁸ Cooperative and nonprofit entities, however, ought to become the norm, and not the exception, for CSA farms. Both structures, like normal corporations, require the creation of a Board of Directors (which can function like the "core group," as originally imagined for the CSA).⁹⁹ As this Note explains below, the corporate entity might better ensure that the farm integrates the community into its daily operations, binding the community and the farmer in a joint enterprise and reclaiming the American food economy through a social and economic revolution.

III. REORGANIZING CSA FARMS AS NONPROFITS: ANALYZING COSTS AND BENEFITS

The remainder of this Note will analyze the meaningful ways in which nonprofit and cooperative business entities aid CSAs in both economic and social terms. Specifically, this Note will address the ways in which CSA farmers can take advantage of the nonprofit and cooperative entities, as well as the differences farmers and their lawyers must account for when deciding on a business entity. This Part will discuss nonprofits, while Part IV will focus on cooperatives.

The nonprofit corporation is one entity candidate that may help the CSA become a central fixture in the American food economy. Like any other business entity, the nonprofit has its benefits and its difficulties in creation and execution. As explained below, the benefits of the nonprofit outweigh both its negatives and the positives offered by the sole proprietorship. First, this Part will discuss how the incorporation process for CSAs works, and how the incorporation process forces CSAs to account for their economic and social goals. Next, this Part will address the economic benefits of the CSA nonprofit. The nonprofit entity offers CSAs discrete economic incentives, as well as secondary benefits that ensure the CSA's continued survival. Finally, this Part will discuss why the social aspect of the nonprofit entity works symbiotically with the communitarian needs of the CSA. Namely, this Part will describe how the nonprofit allows

98. See Lass, *supra* note 9, at 9.

99. See RUNQUIST, *supra* note 62, at 18-19.

farmers to more easily create groups and bases of patrons that ensure a farmer's financial success.

A. The Incorporation and Chartering Process for CSA Nonprofits

A CSA's first requirement in incorporating as a nonprofit is to establish a mission statement. When incorporating as a nonprofit, a CSA must delineate a values-based purpose (a "mission") in its Articles of Incorporation that is consistent with Internal Revenue Code (IRC) section 501(c)(3) in order for the Internal Revenue Service (IRS) to grant the farm nonprofit status.¹⁰⁰ Nonprofit organizations must be organized and operated *substantially*, not totally, for religious, charitable, scientific, literary, or educational reasons.¹⁰¹ No part of the earnings of the nonprofit can inure to any individual, though the organization may hire individuals, and nonprofits cannot lobby or support political candidates.¹⁰² Although CSAs can become nonprofits under various sections of 501(c),¹⁰³ CSAs should aim to become a nonprofit under IRC section 501(c)(3) because that section of the Federal Tax Code exempts eligible nonprofit organizations from most tax liability.¹⁰⁴

In order for an organization to be governed under section 501(c)(3), its activities must be deemed "charitable" under the definitions that the statute provides, which are as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or *educational purposes*, or to foster national or international amateur sports competition ... or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ..., and which does

100. See ORSI, *supra* note 25, at 210; RUNQUIST, *supra* note 62, at 10-11.

101. ORSI, *supra* note 25, at 210.

102. *Id.*

103. I.R.C. § 501(c) (2012).

104. *Id.*

not participate in ... any political campaign on behalf of (or in opposition to) any candidate for public office.¹⁰⁵

At first glance, the statute does not seem to encompass any of the activities that CSAs perform. Farmers and their lawyers, however, have used the “educational purposes” section to help farms meet the definition of a nonprofit under section 501(c)(3), as it encompasses a large number of activities.¹⁰⁶ Indeed, as explained below, the “educational purposes” avenue has provided farmers with a way to socialize the CSA experience and to reunite the CSA marketing platform as a community experience.

A farm can go about incorporating as an educational nonprofit under section 501(c)(3) in two ways. If the farm provides instruction in classrooms or on the farm, the activity related to that purpose, which can include farming, will be exempt from taxation.¹⁰⁷ Farms may also qualify for exemption *without* an explicit educational component if the land owned by the farm or umbrella nonprofit is “ecologically significant.”¹⁰⁸ A declaration of “ecological significance” does not appear to be subject to a strict test. The IRS weighs a number of factors, including whether the area is designated a “wilderness area,” or if the land is managed by a conservation group, or even if the organization trying to get exempt status has working relationships with relevant private organizations.¹⁰⁹

Many CSA farms already meet the requirements of section 501(c)(3) by using the farm for educational purposes. There are CSAs that give lectures and classroom instruction for their subscribers and their guests.¹¹⁰ Genesis Farm in Blairstown, New Jersey, for example, has educational programs in “Earth Literacy,” “Honoring Land and Culture,” and “Honoring Local, Seasonal Foods” that are open to its subscribers and other interested people in the community.¹¹¹ Genesis Farm’s Articles of Incorporation stipulate that its 501(c)(3) purpose is to provide “education about farms and food,”

105. *Id.* § 501(c)(3) (emphasis added).

106. ORSI, *supra* note 25, at 217-19.

107. *See infra* Part III.B.

108. *See infra* Part III.B.

109. *See* Rev. Rul. 76-204, 1976-1 C.B. 152; ORSI, *supra* note 25, at 217-19.

110. *See, e.g., Program Calendar*, GENESIS FARM, http://www.genesisfarm.org/program.taf?_function=chron [<http://perma.cc/C38D-YD27>] (last visited Feb. 22, 2015).

111. *Id.*

and both the IRS and the New Jersey Tax Division have approved Genesis Farm as a 501(c)(3) nonprofit eligible for tax exemption.¹¹² Such educational offerings, in conjunction with Genesis Farm's other farming programs, appear to be enough to qualify Genesis Farm as a nonprofit organization.

Farms may not need to rely on classroom education and seminars like Genesis Farm in order to fulfill section 501(c)(3)'s "education" requirement. Farms can also use their fields as educational tools for members or for school children, providing participants with agricultural participation programs through the produce of the CSA (such as field classes on harvesting or planting foods, checking foods for ripeness, or strategies in crop placement). Other CSAs provide weekly produce on the basis that members must work at the CSA, a form of the work-share requirement mentioned previously.¹¹³ Although such activity may not directly fulfill an "educational purpose" as the classroom instruction provided by Genesis Farm, such programs invariably educate CSA shareholders about land, local food, and agricultural practices. Accordingly, such programs likely fulfill the "educational purposes" requirement under section 501 (c)(3).

One of the problems concerning the incorporation of CSAs as nonprofits is that the purpose clauses in their Articles of Incorporation must be unique and narrow in scope.¹¹⁴ Simply "serving the community" by providing a community garden may not be enough for a CSA to avail itself of the tax-exempt status that a nonprofit can provide. Of course, geography may create distinctions between certain organizations, such as CSAs serving state- or municipality-specific educational goals in different regions of the country, or protecting certain farms through land stewardship, or extending certain regional food and local traditions. However, using geographical distinctions in formulating such clauses could be problematic for the CSA movement as a whole. In order for the CSA movement to

112. Certificate of Incorporation & Certificate of Amendment for Genesis Farm (1989, 1992) (on file with author). The Articles of Incorporation are available for paid download. *Business Entity, Trade Name and Trade/Service Mark*, STATE OF N.J. DIV. OF REVENUE & ENTER. SERVS., <https://www.njportal.com/DOR/businessrecords/Default.aspx> [<http://perma.cc/4LA7-AGP2>] (last visited Feb. 22, 2015).

113. See, e.g., *Chelsea CSA Membership*, CHELSEA CSA, <http://www.chelseacsa.org/join-the-chelsea-csa/> [<http://perma.cc/QF35-UVVN>] (last visited Feb. 22, 2015).

114. RUNQUIST, *supra* note 62, at 11-12.

fully expand and to be able to take its place in the food revolution, multiple CSAs must be able to serve the same region.

The mission requirement is not, of course, necessarily unattractive when considering the overall goal of the CSA movement. Indeed, one of the reasons why nonprofits are so highly desirable is that they are able to bring together groups of people with seemingly divergent interests into the CSA movement and the food revolution.¹¹⁵ The very purpose of the CSA movement is to create a larger communitarian institution that will drive change in the American food system. Nonprofit CSAs can play a major role in that as long as they imagine creative ways to utilize their missions to generate profits *and* bring communities together.

B. Profitability of the Nonprofit CSA

Nonprofits resemble regular limited liability corporations in some ways. The main structural difference between a for-profit and a nonprofit corporation is that nonprofits are created and taxed under a different section of the United States Tax Code.¹¹⁶ This part of the Tax Code provides the possibility for federal tax exemption if the business filing for incorporation meets certain criteria under IRC section 501(c)(3).¹¹⁷

Businesses must fulfill several requirements if they wish to qualify for tax-exemption under section 501(c)(3). As explained above, farms looking to attain nonprofit status will need to create a mission statement, or a “purpose clause,” for their Articles of Incorporation that conforms to one of the charitable purposes listed under the statute.¹¹⁸ The purpose clause in a nonprofit’s Articles of Incorporation serves as the first level of proof that the organization seeking to become a nonprofit wishes to pursue a noneconomic end.¹¹⁹ Although section 501(c)(3) corporations are typically reserved

115. Nonprofits participating in several different types of activities can network with one another to create communities that bridge several interests and areas to create a regionalized support system. *See infra* Part III.C.

116. I.R.C. § 501(c)(3) (2012).

117. *Id.*

118. *See* RUNQUIST, *supra* note 62, at 11-12.

119. *See id.*

for exclusively “charitable purposes,”¹²⁰ a CSA can use the statute in creative ways to attain 501(c)(3) status.

Despite a nonprofit’s ultimately noneconomic end, CSAs, like other nonprofits, must thrive economically in order to fulfill their social role. By forming as a nonprofit, a CSA can flourish while taking part in the food revolution and the CSA movement. The nonprofit entity allows organizations like CSAs to pursue potentially economically inefficient goals¹²¹ with positive social ends, while still providing a benefit for their farmers and directors/trustees.¹²²

The purpose of creating a tax-exempt status for nonprofits is not grounded in market efficiency. Instead, the creation of a tax-exempt status for nonprofit organizations has its own “self-evident” wisdom.¹²³ As one commentator explains, “The tax exemption ... is about much more than money, economics, or optimal profit. Instead, the charitable tax exemption is principally about accomplishing a value-based mission. That mission may at times be at odds with the notion of a pure profit motive that dominates the private market narrative.”¹²⁴

Any lack of efficiency can be made up through the use of the organization’s tax-exempt status, as well as its ability to solicit tax-deductible donations. Donations and tax-exemption may significantly contribute to a nonprofit’s income and help provide a farm with the resources it needs for success,¹²⁵ especially if its activities seem antithetical to its economic viability. These economic incentives may be enormously helpful to farmers who provide the community with a center for agricultural education, especially

120. David A. Brennen, *A Diversity Theory of Charitable Tax Exemption—Beyond Efficiency, Through Critical Race Theory, Toward Diversity*, 4 PITT. TAX REV. 1, 20 (2006) (discussing the various benefits that apply to the “charitable” tax exemption in section 501(c)(3)).

121. Farming is not necessarily an “inefficient” goal, but recent economic performance suggests that farms are becoming less lucrative as the agriculture industry industrializes and mechanizes. *See infra* Part I.

122. Boris I. Bittker & George K. Rahdert, *The Exemption of Nonprofit Organizations from Federal Income Taxation*, 85 YALE L.J. 299, 301-02 (1976).

123. *Id.* Congress conducted “no systematic analysis” on *why* they excluded certain organizations from taxation, as evidenced by a study of the legislative history of the first Revenue Act (1894) that granted such tax exemptions. *See id.* at 301 (discussing Act of Aug. 27, 1894, ch. 349, § 32, 28 Stat. 556).

124. Brennen, *supra* note 120, at 4.

125. *Id.* at 23.

because farming labor often does not produce a yearly income that ensures farm survival.¹²⁶

Forming as a nonprofit can help CSAs counteract the economic uncertainty that marks a farmer’s seasonal work by providing exemption from tax liability. Nonprofits can further the original goal of the CSA by creating a community and advance the new goal of the CSA—helping farmers survive. Indeed, all activity related to the charitable purpose outlined in the entity’s Articles of Incorporation would be exempt from federal and state taxation.¹²⁷ The exemption afforded to nonprofits stands in stark contrast to the regulation facing for-profit corporations, whose earnings are “double taxed,” meaning that the corporate profits themselves are taxed, as well as the dividends provided to each of the members of the corporation, including the farmer.¹²⁸ In order to gain such tax benefits, however, a CSA must be able to articulate why it deserves them, principally by explaining what educational purposes the CSA serves.

C. Utilizing Nonprofits for CSA Patron Base Integration

1. The Social and Economic Benefits of Incorporation for Patron Maximization

In addition to allowing CSAs to create a community centered on food and agriculture, the nonprofit entity also allows these organizations to *establish* the community that the original creators of CSA imagined in the first place.¹²⁹ Not only can these multifaceted organizations extend to a range of people beyond those inherently attracted to the idea of the CSA,¹³⁰ but they have an internal group geared towards the common mission dictated by their Articles of

126. Median gross annual CSA income was at about \$15,000 in 1999. See Lass, *supra* note 9, at 17.

127. RUNQUIST, *supra* note 62, at ix.

128. ORSI, *supra* note 25, at 195.

129. See HENDERSON & VAN EN, *supra* note 17, at 75-82.

130. Most people join a CSA because of the quality of its food and the local food community it provides. See Brehm & Eisenhauer, *supra* note 52, at 103. Performing CSA work among other activities, like creating hiking trails in an area designated for special land stewardship protection, might draw those interested in those other activities to the CSA and draw CSA members to those other organizations.

Incorporation: the board of trustees or directors.¹³¹ A board must act in the best interests of the organization.¹³² Board members thus already act like a core group as imagined by the founders of the CSA movement because they must act *in concert* to forge the best direction for the farm.¹³³ Board members need not be business leaders, but may be members of the community, members of the farmer's family, or others already intimately involved in the management of the CSA.¹³⁴ The CSA becomes a group enterprise and has an entrenched core group just by the nature of the business entity it assumes at its creation.

Beyond the board, CSAs can look to their mission statement, whether it be one of supporting an ecologically significant site or educating a community about food, as also aiding in community creation. The mission and the innate group-creating characteristics of the nonprofit help a CSA farm establish its social mission, while also helping it gain an economic base. The missions of these organizations often include education or community building as part of their purpose clauses in their Articles of Incorporation.¹³⁵

One way that nonprofits have used their powers to dramatically increase economic and social support of their causes is by creating networks or larger nonprofits by merging or becoming partners with *other* nonprofits. By combining with other CSAs of varying types or with other nonprofits, CSAs can dramatically expand their economic bases. One example is the Trustees of Reservations in Massachusetts, which brings together people who maintain nature trails, CSA employees and consumers, those interested in maintaining and visiting places of historical and geological interest, and those interested in natural photography and artwork.¹³⁶ Each of those activities operates under a different segment of the Trustees

131. See, e.g., Certificate of Incorporation & Certificate of Amendment for Genesis Farm, *supra* note 112.

132. See *Shlensky v. Wrigley*, 237 N.E.2d 776, 778 (Ill. App. 1968).

133. See RUNQUIST, *supra* note 62, at 17-26.

134. See *id.* at 17-20, 26 (explaining that incorporators can choose whomever they believe will further the interests of the nonprofit as directors).

135. See, e.g., Certificate of Incorporation & Certificate of Amendment for Genesis Farm, *supra* note 112.

136. See *What We Care About*, THE TRUSTEES OF RESERVATIONS, <http://www.thetrustees.org/what-we-care-about> [<http://perma.cc/8LFT-BRGC>] (last visited Feb. 22, 2015) (listing the organizations that the Trustees operate).

nonprofit corporation, but the organization brings different groups together and feeds them into each other.¹³⁷

The Trustees corporation highlights one way in which creating nonprofits can allow farmers and shareholders to create a community in a way that helps the farmer survive even more profitably than was previously possible. Nonprofits can create relationships with other nonprofits and become connected to each other via larger nonprofits.¹³⁸ These “umbrella corporations” not only create communities, but also provide CSAs with a consumer base thanks to the connections provided by the network of organizations centered on common goals, including environmental protection, land stewardship, and food education.¹³⁹

These umbrella corporations are perhaps the most powerful tool that the nonprofit entity lends to the CSA. Nonprofits that coalesce around a big theme, such as nature preservation and connection to the land, can come together to combine patron bases and the social communities that allow them to function. Attaching a farm to such a network would thus advance both the old and the new goals of the CSA: CSAs were meant to create such a community in the first place, but implanting the CSA into a preexisting community also helps CSA farms survive.¹⁴⁰

2. Addressing Counterarguments to Operating CSAs as 501(c)(3)s

As noted above, nonprofits would be the business entities holding and managing a piece of land on which a CSA operates. Farmers might balk at the idea of not having total control of the land on which their farm is operating, especially if the farm is a smaller piece of a so-called umbrella corporation. After all, most farms are started as sole proprietorships, a business entity that allows a

137. *Id.*

138. “Umbrella” is used to refer to a nonprofit organization that has other nonprofits as members. *See, e.g., What We Care About, supra* note 136.

139. Indeed, some see a larger network of CSA farms as central to creating a regionalized food system, creating a vital space where “various perspectives, values, ideas and philosophies about CSA can be presented and negotiated, resulting in the creation of larger shared visions and new ideas for bringing about social change.” MCFADDEN & GROH, *supra* note 21, at 87.

140. *See supra* Parts I-II.

farmer to do whatever he or she wants with the land and the farm.¹⁴¹

Despite an individual's desire to own and control their own land, however, it is important for a farmer to recognize that CSAs are much more likely to succeed as communitarian enterprises—in which they are able to take part. The entire premise of the CSA movement is rooted in creating a community that takes care of the farm, and which, in turn, receives care *from* the farm in the form of education, a community center, and other activities that focus on nature, agriculture, and food.¹⁴² A farmer acting on his or her own is less likely to become a part of the movement and thus less likely to survive if the CSA enterprise remains small and without community involvement. Thus, farmers must be willing to divest control of the business to a board that includes others besides the farmer and close associates. The farmer must either be hired by a preexisting board of community members, or must willingly hire community members when the farm incorporates.¹⁴³

Farmers should consider the economic benefits inherent in incorporation, especially if a farmer considers economic viability their long-term goal at a time when farm failure rates are at an all-time high.¹⁴⁴ Farmers will still receive an income from the nonprofit that is dependent on the number of shareholders and donations that a CSA receives in a given year, which is a more stable position than depending solely on profit margins that turn on a number of unpredictable factors.¹⁴⁵ In order for farmers to receive such an income, however, farmers should be employees of the organization that owns the farm.¹⁴⁶

141. See Lass, *supra* note 9, at 9.

142. See *supra* Parts II-III.

143. See RUNQUIST, *supra* note 62, at 17-20, 26 (explaining that numerous states require incorporators to invest control to non-family members when the incorporator (the farmer) is an employee of the corporation).

144. See *infra* Parts II.A-II.B.

145. Instability is necessarily a factor when farmers rely heavily on the weather. Stability and “showing solidarity” with farmers are the two main reasons why the shared risk idea holds firm. See Young, *supra* note 26.

146. The idea of a farmer being an employee of “his” farm is tied to the idea that the farm, as a corporation, exists as a legal person and may employ farmers. In a nonprofit, payment is permissible as long as payment furthers the purpose of the organization. Thus a nonprofit farm can justify the hiring of the farmer for advancing its charitable purpose—educating CSA members about farming. See RUNQUIST, *supra* note 62, at 14.

Farmers receive other financial benefits if they become employed by a nonprofit, rather than self-employed. Nonprofits are given special tax status and donation collection abilities because they serve a function that, economically, may not be the most efficient, but may serve a greater public purpose worthy of tax exemption.¹⁴⁷ Further, although farmers may be reluctant to relinquish property ownership rights, doing so will exonerate the farmer from personal tort or contract liability for any activities that the farm conducts.¹⁴⁸

Nevertheless, farmers who set out to create a nonprofit for their own financial benefit may be confused when figuring out how nonprofit payment works, especially because the idea of being employed by a business entity instead of a corporeal person may seem foreign to those who are less familiar with business law. For example, CSAs that operate as nonprofits, or even cooperatives, are not owned by the farmer or a farming partnership, but by the CSA nonprofit, which operates as a legal fiction.¹⁴⁹ CSAs may also be the legal owners of the property where the farming activity takes place, or the CSA may operate under an easement, land grant, or lease from a parent nonprofit corporation that may attach covenants to the land that the farmers use, limiting what the farmer may do with the land.¹⁵⁰

The idea that the farm is held by the CSA nonprofit or cooperative and not the individual farmer is also symbolic. Rather than the farmer singly owning land with the sole purpose of reaping its economic fruits, the nonprofit functions as a means to ensure that the farmer's own economic benefit will not be the only focus of the CSA. Instead, the structure afforded by the nonprofit ensures that the business is run by a larger section of the CSA community—the board of trustees.¹⁵¹ The board of trustees dictates the direction of the CSA like a core group, and is held to the nonprofit's stated

147. See Brennen, *supra* note 120, at 4.

148. *Walkovsky v. Carlton*, 223 N.E.2d 6, 12 (N.Y. 1966).

149. See Certificate of Incorporation & Certificate of Amendment for Genesis Farm, *supra* note 112.

150. See Lass, *supra* note 9, at 7.

151. Using nonprofits and cooperatives as places to promulgate “sharing” activities that focus on providing services to communities is in line with current economic trends. As Janelle Orsi notes, the growing sharing economy (which focuses less on ownership rights and more on environmental impact and economic efficiency) will rely on new business organizations as the “architecture of a new economy.” ORSI, *supra* note 25, at 151-52.

purpose in the Articles of Incorporation that grants them the authority to act, which will ultimately require them to abide by the goals of the CSA.¹⁵² The trustees provide the farmer with a broad pool of expertise and outside observation that may make running a farm easier, especially if the farmer's advice frequently plays into Board decisions.

Farmers would also still be vital participants in the CSA even if their ownership interest in the farm is transferred to a corporate entity. Farmers could still be central in the CSA community by being either employed by the CSA or by participating in board committees without being a member of the board. Farmers will still be able to claim a stake in the CSA nonprofit that they started as "their own." The difference would be that the new goals of the CSA—farm survival and longevity through spreading the risk of loss to shareholders—would be balanced by sharing a stake in the venture with a larger community and would be executed with a form of the "core group," as originally envisioned by those who first fostered the CSA concept in the United States.¹⁵³ This split of responsibility in the CSA enterprise allows the community to assume some financial responsibility through the "shared risk" aspect of CSA subscribership,¹⁵⁴ while also allowing the community some decision-making authority in the farm's day-to-day affairs. Split responsibility will allow the farmer and the nonprofit to justify shared risk while also allowing community members to actually come together and learn more about agriculture.

3. The Cost of Nonprofits and Other Like Entities as a Nonissue

One of the initial barriers to nonprofit incorporation (and thus, a negative aspect of the nonprofit entity) is the cost of initial incorporation, as well as continuing legal compliance work that must be completed year to year. Nonprofits are particularly expensive because they require continuing legal services that farmers perhaps

152. See RUNQUIST, *supra* note 62, at 14.

153. "The principal thing is that [the core group] share[s] a commitment to the project It is a cooperative environment to provide good, clean food, and to support the farm and the farmers." MCFADDEN & GROH, *supra* note 21, at 226.

154. See *supra* Part II.B.

cannot afford.¹⁵⁵ However, with the help of legal clinics in law schools, new billing structures for law firms, and the growing need for transactional lawyers in the “sharing economy” in which the CSA plays a part,¹⁵⁶ these options are becoming more affordable for farmers across the country.

Farmers have numerous options in obtaining the legal services they need to incorporate as either nonprofits or cooperatives. Although reincorporation may be expensive,¹⁵⁷ several free legal clinics may be able to help eligible farmers. Many Legal Aid offices have specialties in serving the needs of farmers,¹⁵⁸ and many law schools have started offering clinics specifically geared towards agricultural enterprises.¹⁵⁹ Smaller law firms may also have a reduced fee billing structure for farmers, so such services are not necessarily out of reach for farmers who want to seek out law firms to take on their work.¹⁶⁰ Finally, several nonprofits whose missions are to aid farms in numerous respects include legal counseling as a free service that they offer to farmers.¹⁶¹

Farmers thus have access to the institutions that may help them attain the legal documentation and compliance forms required to continue striving towards their social and economic goals. Access to these services may be especially vital for more complicated and compliance-intensive entities and businesses, which is the case for cooperatives as detailed in the next Part.

IV. REORGANIZING CSA FARMS AS COOPERATIVES: ANALYZING COSTS AND BENEFITS

Like nonprofits, cooperatives are business entities that may also exist to serve a greater mission. Not only can a cooperative create

155. O'Brien, *supra* note 66, at 39.

156. ORSI, *supra* note 25, at 21-33; *see supra* Part I.A.

157. *See, e.g.*, O'Brien, *supra* note 66, at 39.

158. *See, e.g.*, *Farm and Ranch Project*, LEGAL AID OF NEB., <http://www.legalaidofnebraska.com/page/farm-ranch-and-rural> [<http://perma.cc/PX7G-EAW3>] (last visited Feb. 22, 2015).

159. *See, e.g.*, *The Urban Food, Farm & Agriculture Law Practicum's Statement of Purpose*, MICH. ST. UNIV. COLL. OF LAW, <http://law.msu.edu/clinics/food/about.html> [<http://perma.cc/QX5B-P7W9>] (last visited Feb. 22, 2015).

160. ORSI, *supra* note 25, at 21-33.

161. *See, e.g.*, *Help for Farmers*, FARM AID, http://www.farmaid.org/site/c.qll5IhNVJsE/b.2723615/k.8748/Help_for_Farmers.htm [<http://perma.cc/HT9H-7Z3B>] (last visited Feb. 22, 2015).

a community of consumers, but it can create a community of businesses whose goals and missions are all substantially similar.¹⁶² Yet, there are substantial differences between the two entities. In some respects, cooperatives better serve the community creation function of CSAs, though as detailed below, cooperatives may not be as successful in helping farmers focus on economic viability.

A. Distinguishing Features of Cooperatives

Cooperatives are an important type of business entity—some of the largest businesses in the country are cooperatives, and they are numerous with over 47,000 cooperatives operating in the United States today.¹⁶³ A cooperative is a business entity that may serve *only* its members, and which may serve them by providing services and goods related to the cooperative's choice of industry.¹⁶⁴ Members may be individuals, franchises of a parent organization, or large and interrelated corporations acting towards a common goal.¹⁶⁵

The main feature of the cooperative that distinguishes it from the nonprofit or for-profit corporation, however, is that each member of the cooperative helps determine what direction the cooperative may take in regard to business decisions. Each member, regardless of how much of the cooperative's services he or she uses, *necessarily* has equal voting power in determining the direction of the cooperative in both large business decisions and the process used in day-to-day functions.¹⁶⁶ Each of these members receives an *equal vote*, no matter how large an economic stake any individual member may have in the cooperative.¹⁶⁷

Such a system makes sense when considering that cooperatives exist solely for the purpose of maximizing economic benefits for

162. Like nonprofits, which can have other nonprofits as members, the cooperative entity can have members that are businesses. ORSI, *supra* note 25, at 199.

163. CHARLES T. AUTRY & ROLAND F. HALL, *THE LAW OF COOPERATIVES* 4 (2009).

164. *Id.*

165. ORSI, *supra* note 25, at 199.

166. These votes are counted at meetings where all members of the cooperatives gather, typically involving large business decisions. *See id.* at 188.

167. This system differs significantly from a typical corporate system in which the voting power of each shareholder depends on how many shares the shareholder holds in the corporation and the primary duty to shareholders is not "benefit" but a maximization of return. *See id.* at 159.

their members, rather than providing a return-on-investment for their members.¹⁶⁸ Whereas for-profit enterprises expect a monetary return on investments in an organization, cooperatives extend refunds instead of dividends. Members pay a fee to the cooperative, which the cooperative can use to raise funds and provide services for its members.¹⁶⁹ The members get any money or benefits left over from that activity at the end of the fiscal year.¹⁷⁰ Even then, refunds may be extended only when cooperative activity has been actively aimed at providing economic benefits to its operators and its patrons (O/Ps).¹⁷¹ Only O/Ps may help run the cooperative through a board position, and all board members and executives must be O/Ps that use the cooperative’s services.¹⁷²

The values embedded in the cooperative business entity are thus very different from those of the nonprofit.¹⁷³ Whereas a CSA that runs under a traditional sole proprietorship or corporation model is open to the public both legally and practically, a cooperative CSA may technically serve *only* its members and no one else—it would benefit only the community for which the CSA was created.¹⁷⁴ Although a CSA could theoretically work as a closed membership system in which the only members, and thus the only ones who can derive benefit, are core group members, such a system makes no sense if farmers intend to expand the CSA concept and to create an agricultural community. In such a closed system, patrons wishing to become members of the cooperative would have to become part of a core group, and such systems would not work towards creating a widespread community.

CSAs often already run like open membership cooperatives, which allow anyone to become members, because of the shared risk system that is the modus operandi for most CSA farms—members

168. See AUTRY & HALL, *supra* note 163, at 27.

169. *Id.*

170. *Id.*

171. *Id.* In the case of the CSA, there would likely be no refunds because a CSA’s goal is not to raise money but to extend benefits to its members.

172. *Id.* at 30.

173. See Rodrigues, *supra* note 24, at 1292-93 (explaining how a business entity choice should be reflective of a business’s mission or products).

174. Cooperatives may have either open or closed membership. For the purposes of the CSA, however, it is more advantageous to have open membership, in which anyone can apply to be a member. See ORSI, *supra* note 25, at 187-89.

already pay “dues” and get a “refund” in the form of local foods.¹⁷⁵ Instead of having a shareholder system in which the only relationship between the CSA’s patrons and the organization is that of seller and buyer, the CSA could slightly modify its contract with its shareholders to make each of them a voting member of a CSA cooperative. In a system in which each member has a voting stake in how the business is run, the idea of a member taking on financial risk may create a deeper connection with the CSA, thus increasing its economic productivity and, with an expanding consumer base, dramatically increasing the reach of its message.¹⁷⁶

B. Cooperatives as Social Enterprises

Because each O/P of the cooperative has equal voting power in determining the direction of the farm, the cooperative form is perhaps more reflective of the community ideal from which the concept of the CSA originally developed than the nonprofit.¹⁷⁷ Although some aspects inherent in the nonprofit structure could build community within the farm (for example, a board of trustees),¹⁷⁸ the nonprofit does not place the same focus on the larger CSA community that the cooperative does. Because cooperatives allow each member of the organization to vote on each business decision that the cooperative makes, the managing boards and executives of the cooperative¹⁷⁹ are essentially required to know the cooperative’s members in order to “campaign” for their vision of the cooperative’s direction.¹⁸⁰

This de facto requirement for cooperative management fits perfectly into the vision that the creators of the American CSA movement envisioned for the modern CSA. One hope of the pioneers

175. See *supra* Introduction, Part I.

176. See William H. Simon, *Social-Republican Property*, 38 UCLA L. REV. 1335, 1388-90 (1991) (explaining that “people are often most productive when they see their work as a form of self-expression rather than as a commodity,” and that working among a community increases the productivity of an enterprise because the members of that community experience pleasure in working towards the continuation of that experience).

177. See HENDERSON & VAN EN, *supra* note 17, at xv-xvi; Prakash, *supra* note 27, at 3.

178. See *supra* Part III.C.1-2.

179. Like nonprofits, cooperatives have managing boards that execute cooperative business decisions and policies for the benefit of the cooperative. Unlike nonprofits, managers of a cooperative must also be patrons. See AUTRY & HALL, *supra* note 163, at 27, 35-36.

180. See *id.*

of the American CSA movement was that farmers and consumers could get to know one another, and that a “core group” would organically form among those patrons who wanted a stake in the farm.¹⁸¹ The cooperative could create a community in which farmers must meet with their consumers to educate them about food and environmentalism and maintain a patron base. Farmers would also be employed by the cooperative’s management with a stable salary, further establishing a relationship between farmers and the communities they serve.¹⁸²

C. Economic Benefits and Profitability of Cooperatives

The cooperative entity also presents some of the same economic benefits to farms as nonprofits do. For example, although there is no explicit tax-exempt status for cooperatives as there is for nonprofits under section 501(c)(3), there are provisions scattered throughout the tax code that do provide tax breaks for cooperatives.¹⁸³ The problem is that unlike nonprofits, which are governed by clear federal and state provisions, there is no clear directive on what a cooperative must do in order to obtain tax exemption at the federal level.¹⁸⁴

1. Taxation of Cooperatives

Cooperative tax-exempt status at the federal level heavily depends on the law of the state in which cooperative is located.¹⁸⁵ Unfortunately, because most states organize farmers’ cooperatives

181. See HENDERSON & VAN EN, *supra* note 17, at 75 (“For Community Supported Agriculture to be more than just another direct marketing scheme, the growers and the members need to work together to build an institution they can share.”).

182. Like nonprofits, cooperatives are legal fictions that have boards of directors that can hire persons to further their legal purpose (which is to maximize benefit to all patrons in the cooperative). See AUTRY & HALL, *supra* note 163, at 29-31.

183. *Id.* at 87-92.

184. The closest authority is *Puget Sound Plywood, Inc. v. Commissioner*, in which the Tax Court held that for an entity to qualify for “cooperative status,” it must “operat[e] on a cooperative basis.” 44 T.C. 305, 307-09 (1965). An organization operating on a “cooperative basis” demonstrates the following: (1) democratic control by its members; (2) operation at cost (any money left over is returned to its members after expenses are met), and (3) subordination of capital (returns on investment must be limited). *Id.*

185. See *id.* at 306-07; Treas. Reg. § 301.7701-2(b)(1) (2014).

as for-profit corporations at the state level, they are incorporated as such under state incorporation statutes and are therefore subject to corporate taxation, although some of the principles in *Puget Sound Plywood, Inc. v. Commissioner* may inform state tax agencies in making taxation decisions for “cooperative businesses.”¹⁸⁶

However, farming cooperatives are concurrently subject to a special subchapter of the Internal Revenue Code—subchapter T.¹⁸⁷ Farmers enjoy the exemptions that subchapter T provides because the farming industry has traditionally used cooperatives to market products and farming supplies.¹⁸⁸ This section of the tax code applies to any state-defined corporation *acting* as a cooperative as listed by subchapter T, which explicitly exempts farms acting cooperatively from some federal tax liability.¹⁸⁹ There are, however, several restrictive rules that apply when determining whether a farm may be exempt under section 521 of subchapter T. For example, subchapter T actively limits what types of activities that an exempt farmer’s cooperative may engage in to include only: (a) marketing the products of members and other producers; or (b) purchasing supplies and equipment for use by members and other persons.¹⁹⁰

The IRS’s Internal Revenue Manual (IRM) provides additional regulatory guidance for farming cooperatives. Unfortunately, the manual covers a number of dizzying restrictions and regulations that may be unhelpful to farmers who are unfamiliar with business entity law. Beyond the “permissible activities” section in the IRM, there are limits on who may be a “producer” or “member” in the cooperative for whom the cooperative was made,¹⁹¹ what counts as “farmers’, fruit growers’, or like organizations” for purposes of determining tax-exempt status,¹⁹² and what marketing activity is eligible for tax-exempt status.¹⁹³ Many of these regulations are aimed at revenue-raising measures that a cooperative may take that

186. See *Puget Sound Plywood*, 44 T.C. at 318-19.

187. See I.R.C. § 1381 (2010).

188. See S. REP. NO. 87-1881, at 311 (1962); see also AUTRY & HALL, *supra* note 163, at 9-10.

189. Namely, the double taxation to which for-profit corporations are normally subject. ORSI, *supra* note 25, at 195.

190. See INTERNAL REVENUE SERV., IRM 4.44.1.3 (Jan. 1, 2002), available at <http://perma.cc/5C92-U4FP>.

191. *Id.* at 4.44.1.2.3, 4.

192. See *Sunset Scavenger Co. v. Comm’r*, 84 F.2d 453, 455 (9th Cir. 1936).

193. INTERNAL REVENUE SERV., *supra* note 190, at 4.44.1.3.1.

a CSA would be unlikely to take, which is why they are so complicated. If tax exemption is the ultimate goal of the CSA, nonprofits may be better suited to the CSA’s purposes.

2. Utilizing Cooperatives for CSA Patron Base Integration and Informational Exchange

The cooperative business entity provides much more than tax exemption. Like nonprofits, cooperatives can join forces with other cooperatives or nonprofits to maximize economic benefit to their members.¹⁹⁴ A cooperative grocery store, for example, could have individual CSAs as its members in order to help market and sell the produce that CSAs may not be able to sell through their shareholding programs. Some food cooperative stores already operate their own CSAs for the benefit of their membership.¹⁹⁵ Unlike tax-exempt nonprofits, which must exist solely for charitable purposes, cooperatives may exist for the economic benefit of all of their members. Cooperatives may thus participate in a number of activities designed to boost economic benefit that are not charitable in scope as long as those activities are directed toward farm marketing or supply.¹⁹⁶

In the grocery store example, the organization would struggle to provide a purpose clause that complies with section 501(c)(3) for tax exemption purposes. A cooperative or nonprofit CSA, however, could join together with other CSAs under an umbrella cooperative that serves nonprofit and cooperative CSAs. Whereas the nonprofit CSA can still serve only its charitable purpose as stated in its purpose clause, a cooperative in which nonprofit CSAs are members can work to help benefit CSAs, such as through shared marketing¹⁹⁷ or by providing a centralized hub where CSAs can market products to each other’s shareholders to include in a single CSA “share.”¹⁹⁸

194. See ORSI, *supra* note 25, at 188.

195. See, e.g., *Chicago Honey Co-Op CSA*, CHICAGO HONEY CO-OP, <http://www.chicagohoneycoop.com/chicago-honey-coop-csa> [<http://perma.cc/XKT4-S8UA>] (last visited Feb. 22, 2015).

196. INTERNAL REVENUE SERVICE, *supra* note 190, at 4.44.1.3.

197. See *id.* at 4.44.1.3.1; see also I.R.C. § 521(b)(1)(A).

198. CSAs typically focus on producing vegetables. See *supra* Parts I-II. However, numerous farms work cooperatively to add more variety to CSA shares by working within a network of specialty farms that produce items such as dairy products, breads, and herbs. See, e.g., *About*, GROUNDWORK FARMS, <http://www.groundworkfarms.com/about> [<http://perma.cc/TVP3->

Providing such a hub for both nonprofit and cooperative CSAs goes beyond creating a community of individuals; it could also create a network of CSA communities that span a large geographical area. At GroundWork Farms CSA, for example, a share can include products from a variety of other CSAs across central Pennsylvania.¹⁹⁹ Such a network provides more varied and extensive channels for education about environmental stewardship, organic and local foods, and it provides information for consumers interested in understanding the need for regionalizing the American food system. It is difficult for an individual CSA to provide such extensive community building on its own, and several nonprofit organizations have already created initiatives that focus broadly on environmental conservation while maintaining a CSA component.²⁰⁰

Such a cooperative can also provide farmers and consumers with information concerning a variety of food items that are beyond the conventional products of a CSA. Numerous CSAs now provide, or even focus on, meat shares, allowing shareholders to pick up locally and organically raised meat on a regular basis.²⁰¹ A cooperative of CSA farmers can provide each farmer with the knowledge and skills to expand his or her own CSA, and more importantly, farmers can come together to provide the patrons of each farm in the cooperative with agricultural and food education.

In such a system, members of individual CSAs in the cooperative would have an easier time finding other CSAs that, collectively, can meet their food needs. Of course, applying such a networking system on a broad scale may not be practical. In many cases, traveling to and from a variety of CSA farms every week will not be the most convenient method for each consumer to meet his or her daily food needs. However, if such a system were to function on a broad scale, cooperatives might be the most efficient and practical way to do so if the goal is for farmers and patrons to create a multilayered community that allows local farmers to thrive. Such a community goes beyond that imagined even by the creators of the American

QZAG] (last visited Feb. 22, 2015).

199. *Id.*

200. See, e.g., *What We Care About*, *supra* note 136.

201. See, e.g., *Our CSA*, 8 O'CLOCK RANCH, <http://www.8oclockranch.com/csa/index.html> [<http://perma.cc/VCB3-HMYK>] (last visited Feb. 22, 2015).

CSA movement and could reach goals beyond those envisioned by those creators.

On the other side of the cooperative coin, individual CSAs should not be forgotten. In such a setting, the individual farm would be the cooperative organization, with each of the shareholders a member who has democratic voting power in an organization that is meant only to serve his or her interests. This type of organization would be much simpler, as there would be no refunds or dividends to pay back to the members of the cooperative besides produce. Additionally, the community created by this type of cooperative would be closer to the one envisioned by the founders of the American CSA movement.

Of course, cooperatives are not without their downsides. Cooperatives are difficult to manage and require diligent, and perhaps expensive, accounting practices to be performed by accountants and attorneys. Cooperatives are subject to complex tax laws that vary at the state and federal level, and the individual farmer gives up even more autonomy over her farm than she would had she set up a nonprofit, let alone a sole proprietorship or a partnership with other farmers.²⁰² Nevertheless, cooperatives present special incentives to farmers who would not be averse to working for the organization instead of having full ownership of the farm and who want to create and serve a base of customers that can dictate the direction of the CSA or the farming network. This vision is in line with the original conception of the CSA.²⁰³

CONCLUSION

The CSA began as a small-scale agricultural, intellectual, and cultural endeavor that held much potential for helping increase awareness about the environmental impact of the American agricultural system. Although the CSA began as a grassroots project that its founders meant to build slowly over time (despite growing discontent over the failure of the small American farm and the harms wrought by the globalized food economy), the CSA concept

202. Because the direction of the individual farm (or, on a broader scale, a cooperative farm network) would be dictated by the members of the cooperative rather than the farmer, autonomy is significantly lessened because voting power is diluted more evenly across all cooperative O/Ps. *See supra* Part IV.A-B.

203. *See supra* Part I.

quickly exploded over the next few decades to include many thousands of CSA subscribers.²⁰⁴ The growth was initially spurred by the promise of the resulting longevity of the small American farm, a rapidly deteriorating institution.

The swift growth of the CSA, as well as its rising importance in the lives of numerous consumers, forces farmers and academics to reexamine the origin and purpose of the institution as well as the legal tools that can help it thrive. It has proven successful at making farms more profitable and economically stable—but there is more to the institution than economic viability. Environmental sustainability education should be an important goal, and even if farmers do not start a CSA out of ecological concerns, their farms still play a central part in helping Americans reevaluate how they eat by playing a central role in their lives as a primary producer.

The CSA movement is important because the CSA implicitly advocates for greater community involvement in determining the community's food supply. Equally important is the idea that the social community enterprise should, in turn, be able to support such a community as a matter of both mission and economy. The original CSA concept was almost completely preoccupied by the idea of having consumers know the person who grows their food and how she does so, and forming a group of people whose concern would lead to a more localized food economy. The CSA would have been the perfect vehicle for this idea had it not attempted to go too far, too fast. Fortunately, however, the idea is once again ripe for implementation, but the community will not be so much forced as it will rise organically with the help of the process of a legal and financial restructuring of the CSA farm.

The CSA can easily enact these goals. The CSA ought to embody its original goals using the resources at its disposal, especially at a time when the idea that started the CSA—consumer fear regarding the rapid spread of chemical and mechanical processes used to produce food for consumers—is more widespread than ever.²⁰⁵ Not only is there a sustainable agriculture movement, but the movement directly supports small-scale farmers whose businesses are most

204. The growing number of CSAs suggests a rapidly growing consumer base to support them. See HENDERSON & VAN EN, *supra* note 17, at xv (explaining that from 1996 to 2007 CSA farms grew in number from about 600 to 1700).

205. See *supra* Introduction, Part I.

endangered by the rise of industrial agricultural processes. Even if the CSA is not the most economically efficient way to feed people, the CSA model is a promising candidate to make the American food system more ecologically sound. That alone is enough to justify both the CSA’s existence and the benefits that both federal and state tax agencies extend to CSAs.

The ecological and communitarian aspects of the CSA are its most valuable assets in determining which business entity the CSA should use. Indeed, these aspects provide a moral dimension to the CSA enterprise that similar for-profit farming operations cannot consider. Even if for-profit organizations do pride themselves on environmentally-friendly practices or a community of buyers or users, the CSA is built on an ideological foundation that puts finances on a similar, if not the same, level as its ecological mission.

The nonprofit and cooperative entities encapsulate all of these goals while still providing farmers with a means of living off their land. Allowing farmers to pursue numerous goals instead of picking and choosing which values to pursue (economics over social utility or vice versa) is beneficial not only to the farmer, but to society at large in an economic and ecological sense. The CSA model may unlock a greater network of regionalized food systems that can support entire communities as long as the community supports the CSA. The only thing left to do is to make sure that CSAs have the legal tools they need to reassume their place as integral participants in the American food revolution.

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