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**Agricultural Law and Policy:
A Time for Advocates**

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AGRICULTURAL LAW AND POLICY: A TIME FOR ADVOCATES*

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In March, 1930, a sharecropper in western Arkansas signed a chattel mortgage with a local bank in which he used as collateral the following property:

1—bay horse, 12 years old, Weigh 1000, 15 hands high, Name “Frank”, Worth \$50.00;

1—bay horse, 10 years old, Weigh 950, 15 hands high, Name “Fred”, Worth \$50.00;

1—red cow, 6 years old, Marked swallow fork in each ear, Worth \$50.00;

1—red cow, 4 years old, Name “Jersey”, Worth \$45.00;

1—John Deere Wagon, 3 inch, Worth \$25.00;

1—set of chain harness with leather breaching, complete with bridles, lines and collars, Worth \$15.00;

together with all increase of she livestock, and all of the crop of cotton, corn and other produce which the said party of the first part may raise, or in which he may have an interest for the year 1930, said crop to be not less than 6 acres planted in cotton, 15 acres planted in corn.

The interest rate was 10% and the total amount of the loan was \$54.70!¹ It was but three years later, on May 12, 1933, that President Franklin D. Roosevelt signed into law the Emergency Farm Mortgage Act,² designed to provide assistance to financially distressed farmers. This act, along with the Agricultural Adjustment Act of 1933,³ was only part of the early New Deal efforts to provide some relief to the troubled farm sector, and it represented direct government involvement in agriculture. It also presented a clear statement of government policy relating to the family farm. The President and his Secretary of Agriculture Henry A. Wallace had as their objectives preserving the “traditional structure of agriculture” and “restoring it to its previous position of strength in the economy.”⁴ Current policy is less clear.

Agriculture has changed drastically in the fifty years since the New Deal agricultural legislation was enacted. The average number of people each farmer supplies with agricultural products has increased from ten to seventy-

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1. From a chattel mortgage, 1930, signed by the author's father with a bank in Mena, Arkansas, and previously related in Looney, *The Future of Government Regulation of Agriculture: Finance and Credit* 3 N. ILL. L. REV. 263 (1983).

2. Federal Emergency Relief Act, Ch. 30, 48 Stat. 55, (1933).

3. Agricultural Adjustment Act, Ch. 25, 48 Stat. 31 (1933).

4. Rasmussen, *The New Deal Agricultural Policies After Fifty Years*, 68 MINN. L. REV. 353 (1984).

six since 1930. During the same period, the number of farmers has decreased from 6.3 million to 2.4 million, and the average farm size has increased from 157 acres to 429 acres. Farm population has fallen from thirty-one million to six million while farmers as a percentage of the labor force has declined from twenty-one percent to 2.8 percent.⁵ Moreover, the current financial distress in agriculture portends other even more dramatic changes for the farm sector and for rural communities. Increasing debt-to-asset ratios, cash flow problems, business failures and bankruptcies combined with depressed land and machinery markets not only threaten the continued viability of the farm sector, but also have adverse effects on farm suppliers and lenders. The cumulative effect of these financial problems on rural communities is of particular concern.⁶

These changes in agriculture are highlighted in the three structural reports of USDA. Those reports are the 1972 USDA sponsored report, *Who Will Control U.S. Agriculture?*;⁷ the 1979 USDA study, *Structure Issues of American Agriculture*;⁸ and the late release of the Carter administration, *A Time to Choose: Summary Report on the Structure of Agriculture*.⁹ These reports raise serious questions concerning government policies, direct and indirect, which contribute to inefficient resource use (over-investment and over-production), increased dependence on capital and energy intensive technology, inflation of land prices and concentration of production in fewer and larger farms.¹⁰

Particularly disturbing is the rapid segmentation of agriculture which has occurred the past few years. In 1969 only one in every thousand farms had sales of over \$500,000; today about one in every hundred are in this class. These "super" farms (one percent of total) account for twenty-five to thirty percent of the total value of United States farm production (and three-fifths of United States net farm income).¹¹

This segmentation in United States agriculture has not been recognized by recent government policies and programs.¹² Our programs have failed to recognize the economic realities of today's agricultural sector. For example, support programs using a support price based on "average" farm production costs actually provide an incentive for expansion by the farms that control

5. *Id.*

6. See Thompson, *Farm Financial Distress: Nature, Scope and Measurement of the Problem*, 4 AGRIC. L.J. 450 (1983). An ongoing Task Force at Iowa State University has made an effort to document the financial stresses rural areas are experiencing. See Iowa State University, Progress Report: Some Perspectives on Farm Financial Stress (September 1984).

7. USDA, *Who Will Control U.S. Agriculture?* (1972) (published in North Central Regional Extension Pub. No. 32).

8. USDA, *Structure Issues of American Agriculture*, Agricultural Economic Report Number 438 (1979).

9. USDA, *A Time to Choose: Summary Report on the Structure of Agriculture* (1981).

10. *Id.* at 114.

11. USDA, *Farmline* (August/September 1983).

12. Breimyler, *Agriculture at the Crossroads: Agricultural Policy Issues Beyond the Eighties*, 29 S.D.L. REV. 210 (1984). This article was the keynote address at the 1983 American Agricultural Law Association annual conference.

most of the productive capacity. These farms dominate some product markets and have a significant advantage in acquiring contracts with major processors.¹³

The failure to recognize the disparity in United States agriculture has led to some interesting concepts, such as the 1983 PIK program, which was estimated to have cost twelve billion dollars in addition to the eighteen billion dollars already spent on farm programs. The benefits were distributed as follows:

To the 1.2 million small farmers (sales of less than \$40,000), a total of \$700,000 in benefits;

To the 567,000 farmers with sales of \$40,000-\$100,000, a total of four billion dollars in benefits;

To the 121,000 farmers with sales in excess of \$100,000, a total of nine billion dollars in benefits.¹⁴

To the extent that this was a supply reduction program this distribution was probably necessary. Insofar as it was designed to protect traditional farmers it was a failure. Again, there was no recognition of the disparity in U.S. agriculture.

Another concern with current agricultural policy is that it is often designed one year at a time in a totally inconsistent and uncoordinated fashion. Henry Wallace recognized the nature of the program being implemented 50 years ago: "The present program for readjusting production acreage to market requirements is admittedly but a temporary method of dealing with an emergency. It could not be relied upon as a permanent means of keeping farm production in line with market requirements."¹⁵ Current policy does not recognize this problem. Don Paarlberg characterized the present policies as preferential (only six basic crops are involved plus dairy), profligate (outlays approximate net income from all of agriculture) and perennial (ongoing for fifty years).¹⁶

If we recognize that agriculture is changing and that this change calls for a re-evaluation of agricultural policy, then what role should those with an interest in agricultural law play in the process? Three years ago Neil Harl argued that agricultural law has found a place in the intellectual firmament.¹⁷ Two years ago Don Uchtmann traced the history of the development of agricultural law and emphasized that the unifying "thread that patches together agricultural law is the applicability of that law to the agricultural sector of our economy."¹⁸ Last year Dale Dahl reminded us of the close relationship of agricultural law to agricultural economics.¹⁹ To date, most of our efforts have been directed toward exposition and explanation of the law affecting agricul-

13. Bullock, *Future Directions for Agricultural Policy*, AMER. J. AGRIC. ECON. 234, 235 (1984).

14. AMERICAN FARMLAND TRUST, *NEW DIRECTIONS FOR FARM POLICY* (1984).

15. USDA, *Farmline*, (October-November 1983) at 7.

16. *Id.* at 9.

17. Harl, *Agricultural Law: A Place in the Intellectual Firmament*, 3 AGRIC. L.J. 537 (1982).

18. Uchtmann, *Agricultural Law: Past, Present and Future*, 4 AGRIC. L.J. 443 (1983).

19. Dahl, *Agricultural Law and Economics*, 29 S.D.L. REV. 221 (1984).

ture and the effect of the application of law on the individual farmers—the “private” side of agricultural law. This is important.²⁰ My plea is for us, as professionals interested in law and in agriculture, to go the next step—to become agricultural advocates; a force for change in the public policies (and the law embodying those policies) affecting agriculture.

Many of the efforts to develop programs to preserve traditional agriculture in the New Deal evolved from the ideas of lawyers, economists and others with a deep concern for social issues. A prime example is Jerome Frank, who served for a time as General Counsel of the Agricultural Adjustment Administration (AAA). He was ultimately dismissed because he strongly advocated protection for tenants and sharecroppers in the 1933 legislation. The furor eventually led to the 1937 Bankhead-Jones Farm Tenant Act which was partially effective as a tenant purchase program.²¹ The best way that rationality can be brought into agricultural policy decision-making is for those with both a knowledge of law and agriculture to again become involved in the design of the programs. Unfortunately, the voice of agriculture has become so splintered, strident, sophomoric and shackled with special interests that decision-makers cannot determine who really speaks for the best interests of agriculture. There are nearly 1,000 organizations in the United States directly involved in agriculture. Deep differences exist among them relating to policy and the role of government.²² Even within some major organizations, inconsistencies exist with regard to the policies espoused. One major organization each year calls for a return to free market agriculture and then proceeds to outline dozens of suggestions for continued government involvement in major commodity programs. Perhaps this is explanation enough for the troublesome nature of current policy.

A second reason for professionals to get involved is that one of the major reasons for agriculture’s ineffectiveness is that the wrong people often speak for the industry. One of the most disturbing aspects of the Cryts elevator bankruptcy saga is how agriculture was portrayed in the media. False information, disseminated by media manipulation, left an image of agriculture as self-centered and self-righteous. As Lucy in *Peanuts* often says, “If you can’t be right, be wrong at the top of your voice.”²³

The legal profession, particularly, must assume greater responsibility for molding the law affecting our clientele of agricultural interests. Leon Jaworski in *The Lawyer in Society* quotes a Wisconsin lawyer of the 19th Century:

The legal profession has done many bad things and has produced many bad men; but it is a glorious old profession, and I love it and am proud

20. See Hamilton, *The Importance of Agricultural Law in the Law School Curriculum*, 2 AGRIC. L.J. 31 (1980).

21. Breimyer, *Agricultural Philosophies and Policies in the New Deal*, 66 MINN. L. REV. 333 (1984); see also Rasmussen, *supra* n.4.

22. See Dialogue: The Transformation of American Agriculture: Midwestern Governors’ Conference, Annual Meeting October 10, 1983 (particularly the remarks of Nicholas L. Reding reported therein).

23. McNamee, *A Bit Dog Howls*, 39 DELTA FARM PRESS (August 27, 1982).

of it. It may do in these days of demagogues to denounce it; but I say now and always, here and elsewhere, what all history proves, that there was seldom a great stride made in human progress on which the bar was not a moving power.²⁴

Perhaps this call to arms is not necessary. Neil Harl, again, provides an example for the profession through his efforts to suggest methods for restructuring farm debt.²⁵ Whether one agrees with his proposal or not, the point is that he has "caused bankers and farmers to take long, hard looks at what they've done and where it could lead them."²⁶ What more could be asked of an advocate?

Lawrence Friedman, in *History of American Law*, sums up what law is about:

As long as the country endures, so will its system of law, coexistent with society, reflecting its wishes and needs, in all their irrationality, ambiguity, and inconsistency. It will follow every twist and turn of development. The law is a mirror held up against life. It is order; it is justice; it is also fear, insecurity, and emptiness; it is whatever results from the scheming, plotting, and striving of people and groups, with and against each other.²⁷

We have, in agricultural law, spent most of our energies to date in searching for an understanding of law with all its irrationality, ambiguity and inconsistency. Now it is time for us to move into the thick of the "scheming, plotting and striving" that molds the law as we know it.

24. L. JAWORSKI, *THE LAWYER IN SOCIETY* 16.

25. Guebert, *Neil Harl Squares Off Against the Bankers*, *FARM JOURNAL* (October 1984).

26. *Id.* at 16.

27. L. FRIEDMAN, *HISTORY OF AMERICAN LAW* 595 (1973).