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An Agricultural Law Research Article

The Study of Agricultural Law in the United States: Education, Organization and Practice

by

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I. INTRODUCTION: DEFINING THE STUDY OF AGRICULTURAL LAW

A significant event in the development of the law and legal studies in the United States in the 1980s was the growth and recognition of what is known as agricultural law. Most lawyers react to this label by asking, "what is agricultural law?" Simply stated, it is the study of the law's effects upon the ability of the agricultural sector of the economy to produce and market food and fiber. The relationship between law and agriculture can be seen more clearly in the types of issues generally encompassed within the study of agricultural law. These include the following: Federal commodity programs for price supports and production controls, which in the mid 1980s represented over twenty billion dollars in annual expenditures; tax, business, and estate planning for the over two million farms and ranches in the United States, each of which is organized as a separate business; sales and leases of the one billion acres of land classified as agricultural in the United States of which over three hundred million acres are under active annual cultivation, half in some form of tenancy relationships; restrictions on the ownership and operation of farm land by corporations and non-resident aliens found in over a dozen states; operation of more than five thousand member owned agricultural cooperatives which handle over thirty percent of agricultural purchases and sales; financing annual production expenses and the acquisition of farmland with the United States farm debt now one hundred and forty billion dollars, down from two hundred and twelve billion dollars in 1980; international trade in agricultural commodities with

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1988 export sales over forty billion dollars; and environmental issues relating to agriculture including soil conservation, ground water protection, pesticide registration and use, and preservation of prime agricultural land.

This sampling of issues shows both the breadth and pervasive nature of agricultural law and the economic and social significance of the legal issues comprising it. As can be seen, the law does play an extensive role in shaping the operation of American agriculture and thus our society. In many ways the story of the growth of agricultural law in the United States in the 1980s is the legal profession's recognition that the law does have an extensive role in shaping agriculture. From this conclusion comes the realization that if the legal sector is to perform its function for society then the law must deal with the unique legal issues associated with the production of food and fiber. The purpose of this Article is to document recent developments in American agricultural law and to comment on both its significance and its direction.

When considering the study of agricultural law, a question that many lawyers and professors may ask is how this subject differs from any other area of study. Without detracting from the significance of any other of these areas, there are several features of agriculture which make it uniquely suited as a separate area of legal study and practice. The most important features are the fundamental nature of the production of food to human existence, the extensive use of natural resources made by the sector, and the magnitude of the economic transactions it represents. Over twenty percent of the jobs and economic activity in the United States are associated with the production, processing, distribution, and consumption of food and fiber produced by the agricultural sector. No single segment of the economy makes as widespread and as active a use of natural resources such as land, water, and energy as does agriculture, nor is any function more essential to the preservation of human life.

Similarly, there are features of agriculture which contribute to its somewhat unique nature as an area of legal concentration. One feature which separates agricultural law from such conceptual topics as property law, torts, or evidence is of special significance. As a sectoral analysis, agricultural law

starts with the economic activity of agriculture and then confronts the unique legal issues associated with agriculture. Legal problems within agriculture may cut across many subject areas including issues of property law, contracts, torts, administrative procedure, and taxation. The variety of issues implicated in a typical agricultural relationship make it difficult for some in the legal profession to consider the subject as a distinct area of the law. Unquestionably, this further serves to make the study and practice of agricultural law challenging. The multifaceted nature of agricultural law increases organizational difficulties from an educational perspective. However, this may make the topic an especially valuable one for students because it offers the opportunity to study legal issues in the integrated, multi-issue manner in which they arise in real life. Students who complete an agricultural law survey course often comment that it was the first law school class that required them to synthesize and use what they learned in their first year classes to address practical legal problems.

There are other factors which contribute to making agricultural law a unique area of study. John Davidson¹ has identified six factors contributing to the unique nature of agricultural law as a study of social, economic, and political impacts: (1) The ownership and control of land; (2) the dominance of the biological cycle in the production of agricultural commodities; (3) the overwhelming importance of government regulation in determining the environment in which the sector functions; (4) the extraordinary economic competitiveness within agriculture; (5) the tremendous cultural, practical, social, and political importance given to the "family farm;"² and, (6) the meaning and significance of the structural changes associated with the commercialization of agriculture. The legal issues associated with each of these themes and their impact on both agriculture and society are obvious and provide justification for the existence of agricultural law. To help

1. John Davidson has taught agricultural law at the University of South Dakota for almost fifteen years.

2. For an alternative view of the worth of the farmer to society and the need for government involvement in agriculture, see H. MENCHEN, *PREJUDICES: FOURTH SERIES* 43 (1924).

understand the nature and content of agricultural law, it is worthwhile to consider the role that the law plays in shaping agriculture.

II. THE ROLE OF LAW IN SHAPING AGRICULTURE

One component in the historical development of American agriculture and a major factor in its success that is often overlooked or ignored by the casual observer is the role the existence of a smooth functioning legal system plays in the operation and performance of our agricultural sector. Without the legal and institutional arrangements that provide farmers access to the inputs they need to produce or market their products, American agriculture would be beset with many of the organizational inadequacies and inefficiencies that hinder food production in developing nations and non-market economies. A brief review of the main contributions of the American legal system to agriculture demonstrates the significance of the relationship.³

When considering the private dimension of agricultural production, that is, the legal arrangements which allow an individual farmer to engage in the efficient production of food, the American legal system makes the following advantages and concepts possible:

1. *Access to credit and financing*

Agriculture could not operate without producers borrowing money to acquire land, production inputs, or animals. The legal system provides the mechanism for the lending of money, securing the repayment of loans through mortgages on land and security interests in personal property, and a system for enforcing debts upon default while protecting the equitable interests of the borrower and society.

2. *Land transfers and acquisition*

Farmers must have access to land to be able to produce. The American system of property ownership provides the mechanism for the acquisition and transfer of land titles and the recordation of those interests.

3. For a more detailed discussion of this topic, see Hamilton, *The Role of the Law in Shaping the Future of American Agriculture*, 38 *DRAKE L. REV.* 573 (1989).

3. *Farm tenancy*

Over half of the land in the United States is farmed by someone other than the owner.⁴ The development of landlord tenancy laws and concepts which provide for the temporary use of land by another, with assurances of being paid rent, make the extensive use of leases within American agriculture possible.

4. *Marketing of commodities*

Farmers cannot continue to produce unless there is income from the sale of food and fiber raised on the farm. The United States marketing system, essentially a process of contract development and enforcement, allows farmers to take advantage of available marketing mechanisms to maximize farm income. Special marketing structures such as futures trading, forward contracting, and the cooperative system help facilitate this process.

5. *Transfers of farm operations*

Because most farms are essentially a form of small business, they have a natural life span reflecting the life and interests of the owners. The legal system provides a process to transfer farm operations as continuing businesses, either through intergenerational transfers to the heirs by wills and trusts or through the sale of the farm and its assets.

6. *Buying and selling necessary inputs*

American agriculture has grown increasingly capital intensive in recent decades as purchased seed, feed, fertilizer, chemicals, and equipment have become a more important factor in production. Marketing these inputs to the agricultural sector and assuring their effectiveness and safety are facilitated by legal tools such as contract negotiations and warranties. Developing different methods of payment and securing indebtedness are also important considerations in the agricultural service industry.

7. *Facilitating the formation of businesses*

While much of American agriculture operates as sole proprietorships, many farms and farm businesses are organized as partnerships or corporations. The ability to utilize

4. 1 Bureau of Census, U.S. Dept. of Commerce, 1982 Census of Agriculture, Pt. 15, at 2 (1984).

various legal entities to form and operate agricultural related businesses gives the sector access to financing, limited liability, and business operation benefits provided by flexibility in organizational structure.

In addition to furthering important issues in the private dimension of agricultural production, the American agricultural system enables state and federal legislation that serves the public interest as well. These policies are reflected in the following concepts:

1. *Operation of federal farm programs*

Since the 1930s, the federal government has aggressively implemented laws concerning price supports and production controls within agriculture. These programs, which aim to stabilize prices and maintain farm incomes, utilize short term loans, direct income transfers and production controls, all delivered through binding legal agreements between individual producers and the government.

2. *Production of the nation's soil and water resources*

A major factor of federal and state farm policies is insuring the continued viability and health of the agricultural sector from a natural resource standpoint. Laws promoting soil conservation, limiting the use and pollution of water, and regulating the use of pesticides and other agricultural chemicals exemplify these concerns.

3. *Protection of the health and safety of the nation's farms*

Much of what federal and state governments do for agriculture concerns protecting the sector from adverse forces. One example includes the extensive efforts designed to protect plants and animals from disease and pests. Another example of protective legislation is the promulgation of standards for the development and sale of important agricultural inputs such as seeds, feeds, fertilizers, and agricultural chemicals.

4. *Protection of the nation's food supply*

Perhaps the most important function of the agricultural sector is the production and supply of wholesome, reasonably priced food. The Nation depends on this food to feed its people, to market throughout the world, and to use in food assistance programs both at home and abroad. Most of the components of the American legal system play a role in this regard, but there are also laws designed specifically to protect

the quality, wholesomeness, and availability of the United States's food supply. Two examples are the work of the Food and Drug Administration in approving the use of food additives and of the Food Safety and Inspection Service's role in inspecting meat and vegetables for chemical contamination.

This brief discussion illustrates the role that the American legal system plays in the operation of American agriculture. The growing recognition of this important interrelation is largely responsible for the development of agricultural law in the United States in the 1980s.

III. THE EARLY HISTORY OF AGRICULTURAL LAW STUDIES IN THE UNITED STATES

Agricultural law was first recognized as a unique area of law in the early 1900s. Interestingly, it has only been in recent years that a widespread appreciation of agricultural law has developed. In the 1930s, the onset of the Depression and the financial difficulties experienced by the farm sector resulted in the use of the legal sector for resolving debt enforcement issues. The aggressive government response to chronic economic conditions in the sector also focused attention on the role of law in agriculture. During this period some of the first scholarly writings on agricultural law began to appear in legal periodicals.⁵ In an article entitled *Law and Agriculture*, Professor Harold W. Hannah⁶ wrote the following:

Law is a concomitant of agriculture insofar as its enforceable rules effect the activities of people who may generally be described as "agriculturalists." The adequacy of its rules depends not only upon the wisdom with which they are formulated and applied, but upon the conception which agriculturalists have of such rules prior to their application in particular cases, and to the conception which the legal profession has of the agricultural economies and technologies involved.

A reciprocal obligation exists between the legal pro-

5. The earliest examples of law review symposia on agricultural law topics are: *Agricultural Readjustment in the South: Cotton and Tobacco*, 1 LAW & CONTEMP. PROBS. 257 (1934); *Farm Tenancy*, 4 LAW & CONTEMP. PROBS. 423 (1937).

6. Professor Hannah of the University of Illinois is perhaps the true father of modern agricultural law studies.

fession and every other classification of human endeavor, to achieve a substantial and effective understanding of the other.

This obligation has not been adequately met with respect to law and agriculture, and both callings are the poorer because of it.⁷

In the period from the late 1940s to the mid 1970s the legal community responded slowly to Professor Hannah's challenge. In the late 1940s several books⁸ and law review articles⁹ appeared which focused on the role of law on the farm. However, during this period the study of agricultural law was primarily the domain of agricultural economists who either had legal training or were interested in agricultural issues such as farm business organization or farm leases.

The first effort at an organized study of agricultural law was the creation of the Agricultural Law Center at the University of Iowa College of Law in the early 1960s. The program was a joint effort between the United States Department of Agriculture (USDA), the economics department in the College of Agriculture at Iowa State University, and the University of Iowa College of Law.¹⁰ The Center, staffed by law professors and a USDA economist based at the law school, was responsible for producing a series of excellent monographs on issues of agricultural law and economics.¹¹ The program was the site for the legal training or early work of several individuals who would lead distinguished careers as agricultural law professors, including Neil E. Harl and John

7. Hannah, *Law and Agriculture*, 32 VA. L. REV. 781 (1946).

8. See, e.g., H. HANNAH, *LAW ON THE FARM* (1949); R. ADAMS & W. BEDFORD, *EVERYDAY FARM LAWS* (1949).

9. See, e.g., *Recent Developments in Agricultural Law and Legislation*, 34 IOWA L. REV. 161 (1949).

10. For a discussion of the work of this program, see Hamilton, *The Importance of Agricultural Law in the Law School Curriculum*, 2 AGRIC. L. J. 31 (1979).

11. Examples of the monographs published by the Center include: *EMERGING AND PROJECTED TRENDS LIKELY TO INFLUENCE THE STRUCTURE OF MIDWEST AGRICULTURE, 1970-1985* (J. Brake ed. 1970); *OPPORTUNITIES FOR REGIONAL RESEARCH ON WATER RESOURCES PROBLEMS* (D. Massey & G. Rose ed. 1968); *METHODS OF LEGAL-ECONOMIC RESEARCH INTO RURAL PROBLEMS* (N. Hinds & M. Harris ed. 1966); C. CAMPBELL, N. HINES & M. HARRIS, *LEGAL ASPECTS OF THE SMALL WATERSHED PROGRAM IN IOWA* (1965); M. HARRIS & N. HINES, *INSTALLMENT LAND CONTRACTS IN IOWA* (1965); N. HINES & M. HARRIS, *IOWA FARM FENCE LAW* (1964).

C. O'Byrne. Unfortunately, after the retirement of USDA economist Marshall Harris, this innovative program succumbed to what can charitably be described as intellectual hostility on the part of the law school faculty to the study of "farm" law and ceased to exist by the early 1970s.¹²

However, the events of the late 1970s such as the rapid increase in farm land values, the related demand for tax and estate planning for farmers, and the surge in export sales of agricultural commodities placed increased demands on the legal community to meet the needs of the farm sector. As a result, the late 1970s and early 1980s saw a resurgence of interest in the study of agricultural law.

Drew Kershen, an agricultural law professor at the University of Oklahoma, expounded upon the reasons for this resurgence in the introduction to the 1976 South Dakota Law Review symposium on agricultural law.¹³ Professor Kershen noted three forces causing an increased importance for the agricultural sector and the increased need and interest in agricultural law research: (1) The decreased power of the agricultural sector as a political force, which resulted in deference to other legal and economic techniques, such as courts, for the expression of the sector's positions; (2) the increasingly important role of the agricultural sector as the economic underpinning of the national economy and the balance of payments situation, in combination with the developing importance of agricultural trade policies as an instrument affecting international relations; and, (3) the increased concentration of the production and marketing of agricultural products into large operations with the resulting pressures on the existing legal and institutional arrangements.¹⁴ The forces

12. The irony of the Iowa experience is that the program was terminated only a few years before the onset of the farm financial crisis in the early 1980s which stimulated substantial interest in agricultural law and demand for information and education on the subject. The creation of the Agricultural Law Center by Drake University created the anomalous situation that when the farm crisis struck in Iowa the state law school was not in a situation to provide any assistance while the private law school, not otherwise associated with agriculture, was. It was not until 1987 when interest on lawyer's trust account (IOLTA) grant funds administered by the state were made available for a clinical program on agricultural bankruptcy that the University of Iowa again became actively involved with agricultural law.

13. Kershen, *Introduction*, 21 S.D.L. REV. 479 (1976).

14. *Id.* at 481-82.

noted by Professor Kershner were very powerful and contributed to what would become a period of extensive growth and development of agricultural law in the early 1980s.

IV. THE DEVELOPMENT OF AGRICULTURAL LAW INTO A RECOGNIZED FIELD OF LAW

The modern lawyer confronted with an agricultural law problem for a farm or business client, faces an entirely different circumstance than he or she would have faced ten years ago. In 1980, the attorney researching an agricultural law topic such as the legal rights of a farmer to appeal a federal farm program decision made by the Agricultural Stabilization and Conservation Service would have found little useful material other than a few cases in the digests and perhaps a mention in a law review article. Today's lawyer will find a much different situation. The state law library should be stocked with treatises, journals, case reporters, and other analytical materials on agricultural law that did not exist ten years ago. If the lawyer is from a state with any significant agricultural activity, there is a good chance a law school or agricultural college in that state will have in its employ a professor specializing in agricultural law. Similarly, the state bar association will likely have an agricultural law committee designed to address the special needs of rural practitioners. In addition, a lawyer can easily become a member of the American Agricultural Law Association and receive the monthly newsletter, *Agricultural Law Update*. With a little searching, an attorney can probably find a continuing legal education seminar or materials focused on any topic in question. He or she may even discover that the American Bar Association has an agricultural law committee. What has instigated this change and why?

The easiest answer to this question is that the change has been brought about by the concerted activities and energies of dozens of academics and lawyers who believe in the importance of agricultural law and who have devoted their professional lives to promoting growth in the field. But this answer only states the obvious. The true reason why the field of agricultural law has grown is a culmination of economic, political, and social forces which have made modern agriculture a

highly complex segment of our society greatly affected by the operation of law.

The modern process of development can be seen as starting in the late 1970s when the issue facing the study of agricultural law was one of intellectual respectability and professional recognition. Clearly, there have always been legal issues associated with agriculture, for example taxation, estate planning, and land transfers. However, except for the efforts noted above, there had not been an organized effort to focus on these issues within the legal profession. In the late 1970s, however, several events occurred which provided the critical mass necessary to give agricultural law the impetus towards intellectual maturity. These events, including the publication of scholarly works on agricultural law, the formation of a professional organization in the field, and the creation in the nation's law schools of programs of study on agricultural law topics represent the real growth of agricultural law studies. To review the different components of this development is to understand the current status of agricultural law study and practice in the United States today.

A. Publications

Before any subject can gain recognition as a distinct area of scholarship, it must be defined and examined in the legal literature. This examination helps to draw the boundaries of the topic and provides the flesh on the bones of the body of knowledge. For agricultural law, this definition and development began in earnest in the 1980s. First came the development of a number of scholarly works that gave body to the topic and that provided an outlet for the intellectual efforts of academics working in the area. One of the most significant events was the publication by Matthew Bender in 1981 of a fifteen volume treatise on agricultural law written by Professor Neil E. Harl.¹⁵ The publication of this major work provided both practitioners and academics visible proof of the existence of agricultural law and a sense of the breadth of the topic. In the early 1980s, several other multi-volume agricultural law treatises were published, further adding to the body

15. N. HARL, *AGRICULTURAL LAW* (1981).

of knowledge and resources available on agriculture law.¹⁶

In addition to the publication of treatises, the amount of agricultural law writing in legal periodicals showed a rapid increase. In 1979, Callaghan and Company introduced the quarterly *Agricultural Law Journal*.¹⁷ The publication provided an outlet for academics and practitioners to address the legal issues facing the agricultural community. Also, during this period, several schools, led by the University of South Dakota, published symposia issues of their law reviews focusing on agricultural law issues.¹⁸ The growth of the body of scholarly writing gave further depth and refinement to the topic and provided scholars and agricultural lawyers with the opportunity for professional development.

B. Professional Organizations

During the same period, a core of agricultural law academics and practitioners, led by a group of agricultural economists qua lawyers, organized what would become the American Agricultural Law Association (AALA). After several organizational meetings in Illinois, funded in part by the Farm Foundation, the AALA held its first annual educational meeting at the University of Minnesota Law School in December 1980. The AALA has since sponsored annual educational meetings across the nation, focusing on the major legal issues facing American agriculture. The organization has grown to approximately one thousand members nationwide and is the most recognized and active group working towards professional refinement of the subject. The organization has made significant contributions to agricultural law by publish-

16. See *id.*; J. JUERGENSMEYER & J. WADLEY, *AGRICULTURAL LAW* (1982).

17. The *Agricultural Law Journal*, volume 1 number 1, was published by Callaghan and Company in 1979. The editors of the journal were John Schumann, an agricultural banker in Chicago, J. W. "Jake" Looney, an agricultural economist at Virginia Polytechnical Institute and State University, and James B. Dean, a private practitioner in Denver. In 1983 Callaghan traded the journal to another legal publisher, Warren, Gorham & Lamont, Inc., which changed the name of the publication to the *Journal of Agricultural Taxation and Law*, with Professor Keith Meyer, University of Kansas School of Law, as the chief editor.

18. Examples of agricultural law symposia from this time period can be found in the following journals: S.D.L. REV., annually from 1974 to 1979; 50 N.D.L. REV. 399 (1974); 54 NEB. L. REV. 217 (1975); 27 U. FLA. L. REV. 78 (1974); 7 U. TOL. L. REV. 791 (1976); S. ILL. U. L.J. 299 (1977); IDAHO L. REV. 297 (1978).

ing the proceedings of the annual education meeting in one of the nation's law reviews. Past conference proceedings have been published in the law reviews at South Dakota, Kansas, Alabama, Drake, and Hamline law schools.¹⁹ The AALA also sponsors an annual student writing competition which encourages legal scholarship among law students.

In addition to the formation of the AALA, state and national bar associations have been involved in agricultural law in an effort to meet the needs of rural and agricultural practitioners. While the American Bar Association does not have a section devoted to the topic, many of the existing sections have agricultural law committees. For example, the General Practice Section; the Taxation Section; the Natural Resources Section; the Real Property, Probate, and Trust Law Section; the Administrative Law Section; the Corporation, Banking, and Business Law Section; and the Young Lawyers Division all have agricultural law committees. In the early 1980s, the Real Property, Probate, and Trust Law Section created a committee on Rural Lawyers and Agribusiness. The committee has conducted a number of activities including the publication of a book focusing on use of the correspondent relationship among attorneys to give general practitioners improved access to specialists and improve the quality of legal practice in rural areas.²⁰ The committee has also worked to add an agricultural law bulletin board to the ABANet electronic mail system to improve communication for agricultural lawyers. In 1988, the General Practice Section funded an initiative for rural lawyers which includes the publication of a handbook on agricultural law and the sponsorship of continuing education programs via phone networks.²¹ To improve the overall communication and coordination among the vari-

19. Since the early 1980s several law schools have regularly published agricultural law symposia issues, including Drake University and the University of South Dakota, and others, such as the University of California at Davis and the University of Arkansas, have published at least one such issue.

20. A.B.A. REAL PROPERTY, PROBATE & TRUST LAW SECTION, *LAW OFFICE WITHOUT WALLS: A HANDBOOK FOR THE CORRESPONDENT RELATIONSHIP AMONG ATTORNEYS* (1987).

21. J. LOONEY, J. WILDER, S. BROWNBACK & J. WADLEY, *AGRICULTURAL LAW* (Section of General Practice, American Bar Association).

ous ABA agricultural law committees, bar leaders in 1988 formed an agricultural coordinating council.

The state bar associations have also recognized the existence of agricultural law and its importance to their members. Agricultural law committees have been formed by the state bar associations in: Arkansas, Colorado, Florida, Georgia, Illinois, Iowa, Maryland, Minnesota, Missouri, Nebraska, Oklahoma, Pennsylvania, Texas, Vermont, Washington, and Wisconsin. These committees are engaged in the sponsorship of educational programs and the dissemination of information concerning recent case and legislative developments. Several of the committees publish newsletters for their members. The activities of the organized bar represent just one more component in the development of agricultural law as a recognized field of practice.

C. Education at the Nation's Law Schools

The growth and development of a legal topic cannot be complete until it is recognized by the legal education community as an important part of the education and training of law students. During the period of the late 1970s and early 1980s, a number of law schools, primarily in the midwest, began offering basic survey courses on agricultural law. The courses were generally taught by professors with a special interest in agricultural law but who did not have the institutional freedom to specialize on the topic.²² In 1980 a major development occurred when the University of Arkansas initiated a graduate degree program leading to an LL.M. in agricultural law. Professor J.W. Looney, then at the agricultural economics department of Kansas State University, was hired to direct the program and develop a course of study in agricultural law. Classes such as Regulation of Agricultural Lands, Government Regulation of Agriculture, Food and Drug Law, Forestry Law and Policy, Agricultural Taxation, International Agricultural Transactions, Farm Estate and Business Planning, Agricultural Cooperatives, and Agricultural Finance

22. In 1979 the following law schools offered agricultural law classes: University of South Dakota, Indiana University School of Law, Idaho College of Law, University of Kansas, University of Mississippi, University of Minnesota, University of Oklahoma, Washburn University, and Creighton University.

and Credit. have been developed and implemented. In 1982, the program graduated its first class and now annually produces lawyers trained as specialists in agricultural law. Graduates of the program have taken positions as professors in schools of law and economics, as government attorneys for Congress and the executive branch, as private practitioners, and as in-house counsel for agricultural related businesses and lenders.

During the early 1980s several other law schools became active in agricultural law education. Washburn University in Topeka, Kansas and Hamline University in St. Paul, Minnesota developed reputations for offering programs of agricultural law study in their regular law school programs. In 1983, Drake University School of Law in Des Moines, Iowa added an Agricultural Law Center to its programs. The Center is a multifaceted program offering students the opportunity to study agricultural law topics and providing information and education to the practicing bar and the agricultural community. The Center publishes the *Iowa Agricultural Law Reporter*, conducts annual continuing legal education programs and sponsors an annual Summer Agricultural Law Institute with agricultural law experts from across the nation. Specialized seminars on agricultural law topics, such as biotechnology and agriculture, federal farm programs, agriculture and the environment, and agricultural lender liability have been conducted.²³ The Center's activities are assisted by the Drake Student Agricultural Law Association, the first law student organization affiliated with the AALA.

Efforts to teach a survey course on agricultural law were greatly assisted in 1985 when West Publishing Company published *Agricultural Law: Cases and Materials*.²⁴ The casebook was written by four respected agricultural law professors, Keith G. Meyer from the University of Kansas, Donald B. Pedersen²⁵ from the University of Arkansas, Norman W.

23. For a discussion of the Center's activities see, Hamilton, *A Blueprint for Successfully Developing Agricultural Law Studies: The Drake University Agricultural Law Center After Three Years*, 38 ALA. L. REV. 547 (1987).

24. K. MEYER, D. PEDERSEN, N. THORSON & J. DAVIDSON, JR., *AGRICULTURAL LAW: CASES AND MATERIALS* (1985).

25. Donald B. Pederson took over as director of the graduate program at the University of Arkansas when J.W. Looney was made Dean.

Thorson of the University of Nebraska, and John H. Davidson, Jr. of the University of South Dakota. In 1984 these agricultural law professors and others joined forces to form a section on agricultural law within the American Association of Law Schools (AALS). The section sponsors educational sessions at the AALS annual meeting and works to encourage the adoption and improvement of agricultural law courses. A survey completed by the section in 1986 revealed that of the over 100 law schools responding, twenty-five currently offered agricultural law classes or had plans to do so.

These various events, publishing materials and scholarly research, forming professional organizations, and offering academic classes helped give a voice to the field of agricultural law. They gave the professors and professionals working in the field the opportunity for self expression as "agricultural lawyers." Taken together, all of these events gave agricultural law the recognition it needed to develop professional respectability. As the 1980s passed, the value and usefulness of agricultural law became more fully appreciated, further helping to legitimize its existence as an area of academic and professional study worthy of attention.²⁶

V. THE ROLE OF THE FARM FINANCIAL CRISIS IN FURTHERING THE DEVELOPMENT OF AGRICULTURAL LAW

Perhaps the event most responsible for stimulating interest in agricultural law in both the legal and agricultural communities was the farm financial crisis of the 1980s. During this period, farmland values in the United States dropped by over fifty percent with billions of dollars of farm debt and thousands of farms placed in jeopardy. The farm sector paid a heavy toll not only in economic terms of lost fortunes, but also in human terms of family stress, misery, broken dreams, and even suicide. These events placed great pressures on the legal community to provide both the mechanism for resolving debt disputes and the legislative answers to society's agricultural problems. The farm financial crisis gave those working in ag-

26. For a discussion of this development, see Harl, *Agricultural Law: A Place in the Intellectual Firmament*, 3 AGRIC. L. J. 537 (1982).

gricultural law the opportunity to prove the worth and value of their work and placed the existence of agricultural law firmly in the awareness of any individual, institution, or business even remotely connected with agriculture.

Whether through the development and implementation of state debtor relief laws such as mortgage foreclosure moratoria or expanded redemption rights, through private litigation to enforce agricultural debts or determine lender liability, or in the development of innovative policy responses to pressures on the legal system such as mandatory mediation of farm debt, the legal system played a leading role in the nation's effort to address the farm financial crisis of the 1980s. The role played by the legal system should not have come as a surprise because the majority of farm financial problems were simply issues of contract enforcement. These issues were greatly complicated by a lack of farm income to pay current obligations. The magnitude of the problems, both in numbers of farmers in jeopardy and the sheer size of the debt and lenders at risk, meant that society had a problem much larger than simply a few farm foreclosures. Resolving the legal issues arising in farm debt disputes was often complicated by a lack of recent precedent. Because agriculture had gone through a period of relative prosperity since the late thirties, many of the legal issues in question had neither been addressed by the courts in several generations nor since the enactment of laws such as the Uniform Commercial Code. One legal result of the farm financial crisis was the proliferation of important court rulings on financial issues such as bankruptcy and foreclosure. A second result was the passage of substantial legislative programs concerning farm debtor relief at the federal and state level. These rulings and statutes, which required practitioners to reeducate themselves during the crisis, added to the body of agricultural law. They will have a continuing value as part of the legacy of the period.

A third result was great pressure on the rural legal community to provide legal services to farmers. The stress felt by the farm community was often transferred to the attorneys who were burdened with a huge load of cases with seemingly intractable economic problems. The fact that many of the issues were in an uncertain area of law which increased con-

cerns about competence and malpractice coupled with the shortage of lawyers created localized conflict of interest situations exacerbating the shortage of legal assistance. These forces led several states to fund legal services programs designed especially for financially strapped farmers.²⁷ However, there is another important lesson of the farm financial crisis which will have a lasting impact on agriculture and will help determine the future of agricultural law studies.

When a farmer in the 1980s was faced with the prospect of not being able to make a scheduled land payment, he or she had to consider, probably for the first time, the consequences of the mortgage agreement signed years ago. At that point, the farmer was forced to confront the prospect of the creditor's remedy of foreclosure. While the farmer may have looked at the boilerplate language of the loan agreement when it was signed, he or she had probably not considered the effect of those clauses, especially in the light of the optimism naturally surrounding ventures of that kind. Even if the clauses had been considered, the transaction would probably have proceeded due to either the strong desire to obtain financing to expand the operation or the urgent need to convert short term losses into long term debt. This was perhaps made too convenient by using the appreciation in land values for refinancing. But, in recent years, after having experienced the financial stress of the 1980s or having seen neighbors and friends struggle under insolvency, farmers' appreciation for the legal impact of their actions are probably quite different. No longer are most farmers so quick to sign the documents proffered as just a "little paper work." In the future, it is more likely that the farmer will say "I would like to get my attorney's advice on this before signing."

If the farm financial crisis has any lasting impact on the actions of farmers and those in farm related businesses such as input suppliers or agricultural lenders, it will be an awareness of the legal consequences of the transactions that are entered into and the documents that are signed as a part of any agri-

27. The state of Iowa funded such a program in 1986 with funds allocated to the Department of Justice, which in turn contracted with the Legal Services Corporation of Iowa to provide staff attorneys to represent farmers who could not afford counsel elsewhere. See IOWA CODE ANN. §§ 13.20-24 (West 1989).

cultural business transaction. This increased awareness will have several effects. First, it should make the parties more sensitive to the consequences if the deal goes sour and they must resort to the available legal remedies. Second, it will create an increased demand for lawyers to draft, examine, and explain the legal consequences of varying transactions and documents. This demand for legal services will require the legal sector to provide practitioners with the information and services necessary to stay abreast of legal developments affecting agriculture. Demand from the legal sector will place corresponding pressure on academics, law schools, and other organizations to respond with materials, continuing education seminars, and refinement of agricultural law topics.

The recognition of what is essentially agricultural law by farmers, farm related businesses, and legal practitioners should mean that those in agriculture will come to recognize and use legal services on an active basis as part of their regular business activities. This outcome will be more efficient than what was common during the financial crisis of the 1980s—farm clients turning to lawyers only on a reactive basis, the day before, or even worse, after the sheriff's sale was scheduled. If this integration of legal concerns into the everyday operation of agriculture occurs, then the place of agricultural law as a field of study and practice will be secure.

VI. THE FUTURE OF AGRICULTURAL LAW

With the advent of the stabilization of agricultural land values and the improvement of farm incomes, the farm financial crisis may be lessening across the country. However, the lessons of the 1980s, including the role of the law and lawyers in agriculture, will not be soon forgotten. Such things as the formalization of business transactions, strict compliance with statutory procedures to establish legal claims, and recognition of the role of legislation to provide after-the-fact responses to societal problems reflect the memories of the farm crisis. But even if the lessons of the 1980s are forgotten, the future role of agricultural law may not be diminished because there will be other issues affecting agriculture which will be as important and have as prevalent a legal effect.

One need only look to the significant environmental is-

sues concerning modern agricultural production such as ground water contamination from agricultural chemicals, animal rights, and consumer concerns over the presence of pesticide residues in food products to see the types of issues that may shape agriculture in the years ahead. The increasing importance of international trade, especially after the 1992 implementation of the E.C. White Paper, the world economy, and foreign relations in determining the health of the United States farm sector also means that there will be an increasing role for international law and policy relating to agriculture.²⁸ These issues and the many others which will face agriculture in the years to come require the legal system, academics, practitioners, courts, and lawmakers to understand agriculture and recognize the role that the law can play in shaping its future. The history of the last ten years and the recognition, legitimization, and now integration of agricultural law into agricultural decision making provides an important foundation for the further refinement of agricultural law.

28. There presently exists a network of agricultural law groups in many nations of the world. In Europe, the *Comite' European du Droit Rural* (CEDR) has been in existence of over thirty years. Agricultural law specialists and organizations exist in most nations, including the Peoples Republic of China, the Soviet Union, and various countries in Africa and South America. In 1988 a worldwide academic union in agricultural law was formed by a group of academics from Europe, Africa and South America. Agricultural lawyers from throughout the world are now beginning to communicate with one another on issues of common concern. In 1986 the AALA cosponsored a joint Euro-American agricultural law conference in Plymouth, England and other international conferences and exchanges are now being planned.