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Book Review: Harl, Agricultural Law

by

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BOOK REVIEW

AGRICULTURAL LAW. By Neil E. Harl. New York: Matthew Bender & Company. 1980. Fifteen Volumes. \$60.00 per volume.

*Reviewed by Donald L. Uchtmann**

Many exciting events are currently taking place in the field of agricultural law. One of the most significant of these recent developments is the publication of Professor Neil Harl's¹ comprehensive multivolume treatise, *Agricultural Law*.² The publication of this treatise is welcomed by the many scholars and professionals who currently teach, conduct research, or practice in areas of agricultural law, but the treatise may come as a surprise to others less familiar with the subject. The potential surprise is based on the apparent paradox in a *treatise on* agricultural law: the subject of a legal treatise is generally a well-established academic subdiscipline of law such as property law or contract law;³ yet the unifying thread that patches together agricultural law is the applicability of that law to the agricultural sector of our economy. The unifying thread of underlying fact, rather than a traditionally recognized division of law, makes the Harl treatise novel in at least this one respect. Also, because of this novel characteristic, the treatise can be meaningfully reviewed only in the context of the evolution of agricultural law.

Accordingly, the subject of agricultural law must first be considered. What characteristics of agriculture initially encouraged the development of agricultural law as a meaningful division of the law? To what extent does the literature reflect changing levels of interest or a maturing of the substantive components of agricultural law? Are the inferences to be drawn by a survey of the literature confirmed by the

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1. Neil E. Harl is the Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University. B.S. 1955, Iowa State University; J.D. 1961, University of Iowa; Ph.D. 1965, Iowa State University.

2. Fifteen volumes are planned for the treatise. The first six were published early in 1980. Volumes 7, 9, and 10 were published later in 1980. The remaining volumes are expected during 1981.

3. See, e.g., K. DAVIS, ADMINISTRATIVE LAW TREATISE (2d ed. 1978); F. GRAD, A TREATISE ON ENVIRONMENTAL LAW (1973); J. WILLARD, A TREATISE ON THE LAW OF REAL ESTATE (1869); S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS (3d ed. W. Jaeger 1957).

development of agricultural law programs at institutions of higher learning? Finally, what other recent developments accompany the publication of the treatise? This historical perspective will provide invaluable insight as the treatise *Agricultural Law* is then reviewed.

AGRICULTURAL LAW: A HISTORICAL PERSPECTIVE

Because agricultural law can be conceptualized as law applicable to agriculture, the roots of the subject can be traced back to ancient civilizations in which members of the society ceased to be hunters and became tillers of the soil and herders of the livestock. The earliest written laws, such as the Mosaic Code, the Greek Farmer's Law (about 1000 B.C.), the Ecolga (a later Greek code applying to agriculture), and the Code of Hammurabi (about 2250 B.C.) all contained many provisions regarding agriculture.⁴ For purposes of this Review, however, an examination of agricultural law as a dimension of more recent American history is more appropriate. In conducting this review, let us first take a broad look at why agricultural law, which is admittedly an amalgamation of many separate legal subjects, ever became forged into a semicohesive area of the law.

Characteristics of the Agricultural Sector That Initially Encouraged the Development of Agricultural Law as a Meaningful Division of the Law

In 1911 a great legal mind of this century, Hugh Willis, turned his talents to the task of composing a *Farmers' Manual of Law*:⁵ "The author has long felt that the farmer ought to have prepared for him a law book which would especially meet his needs."⁶ Professor Willis gently chided agricultural colleges of that day to "awake to the necessity of teaching law" and apologized for his own delinquency in addressing the topic of agricultural law.⁷

Focusing mainly on the areas of contract and real estate law, this early work illustrates the special legal needs of our rural society. It also

4. See, e.g., THE CODE OF HAMMURABI KING OF BABYLON (2d ed. 1904). This Code of 250 rules, written about 2250 B.C., contained several statements about the rental of farmland and the responsibilities of both landlord and tenant. Many good husbandry requirements were incorporated into the law. For example, rule 42 provided that if a man rented a field for cultivation but did not produce any grain because he failed to till that field properly, he was required to give grain to the owner of the field on the basis of the produce of adjoining fields. *Id.* at 25. Rules 30 and 31 provided that if a man left his fields uncared for but returned in one year they should be returned to him. *Id.* at 21. Yet if he left his fields untilled for three years he was not allowed to reclaim them. *Id.* See generally D. UCHTMANN, J. LOONEY, N. KRAUSZ & H. HANNAH, AGRICULTURAL LAW: PRINCIPLES AND CASES ch. 1 (1981).

5. H. WILLIS, FARMERS' MANUAL OF LAW (1911).

6. *Id.* at vii.

7. See *id.*

shows that agricultural law, even at the turn of the century, was not a new phenomenon. Should this early example be misleading, however, it must be pointed out that agricultural law is not synonymous with property law. Nor is it, in reality, a traditional subdiscipline of the law. It is, rather, "a way of focusing attention on some legal rules which have special importance to farmers."⁸

Agricultural law finds its expression in combinations of rules and regulations that range from those direct in nature—like the Agricultural Adjustment Act of 1938⁹—to such indirect and far-reaching policies as laws affecting research, conservation, consumer programs, international trade, and debtor and creditor relationships. Thus, agricultural law may include the study of any or all of the following: agricultural cooperatives, tort liabilities, labor relations, income taxation, estate planning and taxation, antitrust and unfair trade practices, securities regulation, property law, insurance, environmental law, contracts, and administrative procedure.

In a sense, such diversity of topics hardly belongs under the rubric of one division of the law. However, there are at least two reasons why agricultural law did merge into a semicohesive area of study. One reason was the sheer physical isolation of farmers. Because the farmers of old could not attend evening classes or obtain direct access to materials and resources, legal information had to come to them. Manuals, extension pamphlets, and circulars were produced to answer the great variety of legal problems that farmers encountered in their daily lives. The distinct need to bring this body of knowledge to the farmers was accompanied by the leisure time—also a result of this isolation—needed to pursue knowledge in legal areas pertinent to their lives and businesses.

A second reason for the development of agricultural law was the character of the subject matter itself. Agricultural law evolved as a meaningful dimension of the law because of the unique treatment accorded agriculture by legal institutions. Basic to every society is the provision of enough food to feed its people. Agriculture is a necessity in the absolute sense of the word. As a consequence special allowances had to be made for agriculture when shaping national policies. Employment on the farm often had to be carried on under what some would call substandard conditions. In other areas, for example, manufacturing, society could conduct a benefit-burden analysis at any given time and if the harm created in producing more automobiles was not balanced by the benefits bestowed on society, the social order could realistically impose more safeguards on working conditions.

It has not always been possible to similarly manipulate the agricultural sector. Food had to be produced and occasionally this meant not

8. H. HANNAH, *BEUSCHER'S LAW AND THE FARMER* 31 (4th ed. 1975).

9. Agriculture Adjustment Act of 1938, ch. 30, 52 Stat. 31 (current version at 7 U.S.C. § 1281 (1976)).

enforcing the child labor laws or not applying workers' compensation provisions to the farm community. In time, such exemptions from social service programs led to the growth of a field of law interpreting these agricultural exemptions.

Affirmative incentives were required, too, at times to ensure that agriculture enjoyed a stabilized economic position in the marketplace. It is for this reason that special tax provisions for farms were created. Quite early, such major legislation as the Homestead Act of 1862 was enacted,¹⁰ designed to favor the actual tillers of the soil and maintain the small, single-family farm.¹¹

Finally, the agricultural community also had developed some unique qualities as a sector of the nation. From rural society came the idea of cooperative systems of purchasing and marketing. Farms also were an area of the economy typified by small businessmen struggling to stay small in the age of big business. Underneath these factors was the structure of the countryside itself, again setting the farmers apart. The lack of concentrations of political or economic power in any one agriculture group, coupled with the characteristic isolation of farmers created a distinct set of rural institutions, rural political organizations, and also a collection of legal principles that became known as agricultural law.

Having noted some of the forces that initially encouraged the development of agricultural law as an identifiable collection of legal principles in this country, the subject can now be analyzed more effectively. To what extent has interest in agricultural law ebbed and flowed over the decades? What forces have shaped its development over time? Perhaps some answers to these questions can be found by examining the literature of agricultural law, in both a quantitative and qualitative sense, in light of our knowledge about the evolution of agriculture in the United States.

A Survey of Agricultural Law Literature

Agricultural law has been quietly evolving since even ancient times. The exact process of this evolution is difficult to document, but part of the evolutionary trail can be discovered in the *Index to Legal Periodicals*.¹² Interestingly, Volume 1, which indexes legal articles through December 1886, contains five entries under the heading "Agriculture."¹³ A further review of the *Index* suggests that interest in agricultural law was sus-

10. Homestead Act of 1862, ch. 75, 12 Stat. 392.

11. *See id.*

12. The following discussion of the *Index to Legal Periodicals* does not purport to be a true representation of all agricultural law articles, as some quite possibly are indexed to other headings. Nonetheless, it is a fair indication of the level of interest at any given time.

13. The five entries for articles in Volume 1 of the *Index* were: "Agricultural Commission"; "Agricultural Holdings Act, 1883"; "Laws Relating to the Fencing of Agri-

tained at a relatively low level in the first decades of the 1900s, with only thirteen articles listed for years 1926-1928,¹⁴ and only nineteen for the period 1928-1931.¹⁵

A dramatic jump occurs, however, in the 1930s. From 1931-1934, there were over forty-six articles listed in the guide,¹⁶ including the first symposium addressing agricultural law—"Agricultural Readjustment in the South: Cotton and Tobacco," appearing in the 1934 volume of *Law and Contemporary Problems*.¹⁷ This rising emphasis on law and agriculture is, of course, consistently parallel to the great economic changes of the 1930s. Depression and overproduction cast their shadow upon farming as on all areas of the economy.

During this decade soil conservation and federal subsidies were employed as countermeasures to depressed market conditions. The concept of parity emerged then also to ensure to farmers a decent income. The 1920s and 1930s also saw the second great human migration from rural America to the cities. As farmers lost numbers in the electorate they were forced more and more to depend on legal and economic institutions for solutions to problems and the implementation of desired policies.

The Second World War years necessarily intervened to subdue interest in agricultural law. But in the postwar years of the 1940s such areas as the rights and duties of landowners and public interest in land ownership continued to be of concern to legal scholars as did such basic areas as tort and contract theory, water and drainage, and farm labor. Nevertheless, the total number of articles entered under the heading "Agriculture" in the *Index to Legal Periodicals* was not impressive during the decade, and only one symposium appeared—"Recent Developments in Agricultural Law and Legislation" published in a 1949 volume of the *Iowa Law Review*.¹⁸

The commodity surplus years of the 1950s witnessed a continued decline in interest afforded agriculture and the law, at least as measured by the number of legal articles indexed under "Agriculture." This conclusion is somewhat misleading, however, for during the decade there was an important development at the University of Iowa that was not reflected in the mere quantum of legal writing devoted to agriculture. In 1954 the Iowa Agricultural Law Center was established at the Iowa College of Law to do research in agricultural law.¹⁹

cultural Holdings as Between Adjoining Occupiers"; "Agricultural Leases"; and "Agriculture and Distress." 1 L. JONES, AN INDEX TO LEGAL PERIODICALS 13 (1888).

14. 1 INDEX TO LEGAL PERIODICALS 24 (1926-1928).

15. 2 INDEX TO LEGAL PERIODICALS 33 (1928-1931).

16. 3 INDEX TO LEGAL PERIODICALS 34-35 (1931-1934).

17. *Agricultural Readjustment in the South: Cotton and Tobacco*, 1 L. & CONTEMP. PROB. 257 (1934).

18. 34 IOWA L. REV. 161-353 (1949).

19. See note 38 *infra*.

It might also be said that the urban-rural conflict lessened during this time. In a way the farmer's basic philosophy was more nearly shared by the generation of the 1950s than by those of previous decades. A surge of individualism seemed to reoccur. Thus, the historical conflict between self-sufficient farmers, embodying individualism and tradition, and their urban brothers and sisters, more dependent upon the community and the "common good," was less acute.²⁰

In the late 1960s and through the 1970s this dormancy ended, and interest in agricultural law as measured by the number of indexed agricultural law articles took a tremendous upsurge. In the 1970s alone, the number of symposia devoted to agricultural law was triple the number of any previous decade.²¹ Farmers again found themselves isolated in their individualistic philosophies in an era of communes and coexistence. Seemingly alien symbols began to appear on the horizon as citizens became more concerned with clean air, pure water, and a pollution-free environment.²² Growing "consumerism" tended to turn consumer against producer.

As a result, traditionally protected concerns for the farmer were opened for inspection and reevaluation: the rights of farmers to decide for themselves how they will use their land, the migrant labor system, ad valorem taxes, and workers' compensation. One commentator, noting that agriculture had evolved beyond its supporting institutions, called this time period one of an "institutional vacuum."²³

Nevertheless, agriculture continued during this time to be a basic underpinning of the national economy. Individuals began to be cognizant of the problems of scarcity on the domestic level and their correlative impacts on domestic inflation. On the international level even urban dwellers became very aware of agriculture's impact on the United States' balance of payments and its relationship to both inflation and our foreign policy goals.

The increasing size and complexity of farming units during this decade also led to a tremendous increase in attention focused on agricultural estate planning and business organization. The phenomenon of the corporate-owned farm threatened to drive the family farm into extinction in the eyes of some, but was viewed as a vehicle for saving the

20. For a discussion of the urban-rural clash in legislation of earlier decades, see Wershow & Jurgensmeyer, *Agriculture and Changing Legal Concepts in an Urbanized Society*, 27 U. FLA. L. REV. 78, 78-79 (1974).

21. The specific "score" in the *Index of Legal Periodicals* appears to be as follows: 1930-1939:2; 1940-1949:1; 1950-1959:5; 1960-1969:3; 1970-1979:15. Interestingly, in 1974 the *South Dakota Law Review* published its first agricultural law symposium—the first of an annual series of such symposia. 19 S.D. L. REV. 507-644 (1974).

22. Wershow & Jurgensmeyer, *Agriculture and Changing Legal Concepts in an Urbanized Society*, 27 U. FLA. L. REV. 78, 82 (1974).

23. Kershen, *Introduction* to 21 S.D. L. REV. 479, 484 (1976) (Symposium on Agricultural Law).

family farm by others. More and more these issues required, at the least, an understanding of sophisticated legal concepts, and often, the aid of a well-informed attorney.

The recognition by farmers and ranchers of their increasing need for day-to-day counsel by attorneys and other professionals is a most important development. It raised a number of questions about the ability of the bar to provide capable legal assistance to a new farmer in a new age. The agricultural law literature of the 1970s not only contains a number of articles addressing new legal issues; it also contains a number of practical articles designed to assist the attorney in developing the new skills that were being demanded by a highly capitalized and economically sophisticated agricultural producer.

Agricultural law, as a collection of legal principles of importance to agriculture, had come of age. The maturing had occurred on two fronts: first, as the community of legal scholars recognized the increasing extent to which significant agricultural law issues permeated our entire society; and second, as the earlier set of legal principles needed directly by the producer was joined by another set of legal principles essential to the successful practice of agricultural law. Additional confirmation of and insights into this maturing process can be seen as we trace the development of agricultural law in the university setting.

The Development of Agricultural Law at Institutions of Higher Learning

The subject of agricultural law has an interesting history as a part of the teaching, research, and public service activities of American universities. Broadly speaking, the evolution of agricultural law programs followed either of two paths. The first path was the development of agricultural law programs as a part of colleges of agriculture, typically under the administrative roof of the department of agricultural economics or its equivalent.²⁴ The second path was the development of agricultural law as a part of the law school curriculum.²⁵

24. In the author's opinion this marriage of agricultural law programs with economic departments occurred primarily because agricultural law had more in common with agricultural economics than it did with other departments such as agronomy or animal science. The parent disciplines of law and economics were both, if you will, "social sciences" and agricultural law and agricultural economics both involved applications of the parent theoretical discipline to agricultural problems. Some have suggested that agricultural law programs in departments of agricultural economics were involved primarily in interdisciplinary activities concerned with economic optimization. See, e.g., Kershen, *Introduction* to 21 S.D. L. REV. 479, 485 (1976) (Symposium on Agricultural Law). Certainly some significant interdisciplinary work has been and continues to be carried out, but the central thrust of agricultural law programs is primarily legal in nature.

25. In some instances a hybrid model developed involving joint appointments with the course taught in either or both of the colleges of agriculture or law.

The agricultural law program at the University of Minnesota is typical of this hybrid mode. Dale C. Dahl, Professor of Agricultural and Applied Economics and Adjunct Professor of Law, University of Minnesota, came to Minnesota in 1964. At the law school he

The college of agriculture model seems to have had its genesis at what is now the University of Illinois where, in 1867, a committee of Regents of the University recommended a curriculum in agriculture including a course in "Real Estate Jurisprudence," defined as "the laws regulating the tenures and transfers of land and the laws relating to rural affairs."²⁶ The recommendation was short lived, however, and the Illinois agricultural law program did not really get started until 1939 when Professor H.W. Hannah joined the Department of Agricultural Economics and started teaching the course in agricultural law.²⁷ The agricultural law group at Illinois has continued to flourish since 1939 and, with three lawyers on its staff, is currently the largest agricultural law group affiliated with any college of agriculture.²⁸

Perhaps the next institution to offer agricultural law in its college of agriculture was the University of Wisconsin. In 1947 Professor J.H. Beuscher began teaching a course in farm law to agricultural students. Professor Beuscher was a Professor of Law at Wisconsin and also developed law-in-action studies at the law school.²⁹

Surveys conducted in 1954 and 1963 identified a continuing increase in the development of agricultural law in colleges of agriculture. The number of full or part-time staff members engaged in teaching or research in agricultural law had increased from ten to seventeen. During the nine year period there was little increase in the number of agricultural colleges offering a regular course in agricultural law (nine in 1963), but the number carrying on research had doubled from six to twelve.³⁰ The growth of agricultural law programs at colleges of agriculture has continued especially in recent years. Today at least twenty universities have such positions.³¹

began a seminar in agricultural law in 1965 and more recently developed an agricultural law course. In the College of Agriculture he has been involved with an agricultural law seminar since 1973 and more recently with an agricultural law course.

26. Hannah, *Helping the Law Serve Agriculture*, in PAUL A. FUNK RECOGNITION PROGRAM: PAPERS BY THE RECIPIENTS OF AWARDS IN 1971, at 17 (available from the University of Illinois College of Agriculture at Urbana-Champaign).

27. Interestingly, the College of Law at the University of Illinois initially objected to using the word "law" in the original agricultural law course. Accordingly, the course was called "Farm Administration." After World War II the College of Law dropped its objection to use of the word "law" and the course became "Agricultural Law." *Id.* at 18.

28. Shortly after World War II, Professor Hannah was joined by Professor N.G.P. Krausz. After rich and productive careers, both retired from the University of Illinois during the decade of the 1970s but the agricultural law program continued in the hands of "second generation" staff. That program now involves significant research activity as well as teaching, which includes undergraduate courses in agricultural law, agricultural taxation, business organizations, and adult education or extension programs.

29. Beuscher, *Preface* to BEUSCHER'S LAW AND THE FARMER at vii (4th ed. H. Hannah 1975).

30. Hannah, *Helping the Law Serve Agriculture*, in PAUL A. FUNK RECOGNITION PROGRAM: PAPERS BY THE RECIPIENTS OF AWARDS IN 1971, at 20 (available from the University of Illinois College of Agriculture at Urbana-Champaign).

31. This estimate is based on the author's firsthand knowledge acquired through his

The significant growth of agricultural law programs in colleges of agriculture parallels the previously noted upsurge in the number of agricultural law articles in the past decade. In addition, the character of these programs also changed. This changing character can be seen by examining one of these agricultural law programs in some detail. Because it supports the oldest of these programs, the University of Illinois is a logical choice for this more detailed review.

Important changes have occurred in the agricultural law program at the University of Illinois since its birth in 1939. In its teaching program, for example, the original course was a mixture of law and economics with the law portion devoted almost exclusively to property and landlord-tenant law. In later years nonlaw subjects were eliminated and farm tenancy absorbed a smaller portion of the course. Additional subjects were added: water and drainage; farm labor; regulatory laws; livestock and disease laws; legal rights and restraints in the use of land; basic tort and contract law; environmental law; laws pertaining to agricultural finance; federal, state, and local tax systems; and business organization.³²

As the subject matter of the teaching program evolved, so did the teaching process. A case book of agricultural law developed³³ and several different goals became apparent, including helping students learn legal principles that they must apply in their everyday lives, gain an appreciation of our legal system, and become aware of potentially troublesome situations in which the advice of attorneys would be needed to prevent future legal problems.

The research and writing dimension of the program also changed significantly. With few exceptions³⁴ the earliest research and writing concerned everyday legal problems of farmers and was aimed at farmers.³⁵

work with an evolving American Agricultural Law Association. The estimate may well be incomplete. It should also be noted that at the time of this writing several positions at these universities were vacant and other positions are of an adjunct nature.

32. See Hannah, *Helping the Law Serve Agriculture*, in PAUL A. FUNK RECOGNITION PROGRAM: PAPERS BY THE RECIPIENTS OF AWARDS IN 1971, at 18-19 (available from the University of Illinois College of Agriculture at Urbana-Champaign). It should be noted that Professor Hannah also developed a course in veterinary jurisprudence that became a part of the curriculum for professional students in the University of Illinois' College of Veterinary Medicine.

33. The book in use at Illinois has evolved from H. HANNAH, *LAW ON THE FARM* (1948), through Krausz's locally published *Cases and Materials on Agricultural Law* into the newest book by D. UCHTMANN, J. LOONEY, N. KRAUSE & H. HANNAH, *AGRICULTURAL LAW: PRINCIPLES AND CASES* (1981).

34. One notable exception is an article by Hannah in the Symposium entitled "Integrating Law and Other Learned Professions." See Hannah, *Law and Agriculture*, 32 VA. L. REV. 781 (1946) (discussing the relationships between law and agriculture in the ownership and conveyancing of farm land).

35. For example, Professor Hannah initiated a series of short releases entitled "Law on the Farm" prepared through the late 1940s and early 1950s and published weekly in many newspapers and farm magazines. A variety of bulletins and circulars are currently

This direct written communication with lay persons remains an important part of the agricultural law research and writing, but in more recent years it has had to share center stage with research and writing concerning contemporary legal issues in agriculture of concern to legal practitioners, scholars, and other professions.³⁶

The extension and public service dimension of the program has followed a similar path. In the earlier days of Illinois' agricultural law program, informational meetings were directed primarily at lay audiences, but in more recent years the professional audience has become of equal importance. For example, in the last five years agricultural law personnel have made some twenty-four separate individual appearances on programs sponsored by the Illinois Institute for Continuing Legal Education (CLE) and have written or revised twenty-nine chapters for CLE handbooks or other CLE publications. The development of an annual textbook for tax practitioners with agricultural clients is another example of the increasing importance of professional audiences in the public service and extension work of the agricultural law program.³⁷

The law school model for agricultural law has appeared more recently at American universities. At least ten law schools offer courses in agricultural law: Creighton University, Idaho College of Law, Indiana University, University of Kansas, University of Minnesota, University of Mississippi, University of Oklahoma, University of South Dakota, Southern Illinois University, and Washburn University.³⁸

being published that are designed to provide important law-related information directly to lay persons.

36. For example, no less than 12 articles authored by the Illinois staff have been published or accepted for publication in legal journals between 1978 and the present.

37. Farm Income Tax Schools (one or two day courses) have been sponsored by the Illinois Cooperative Extension Service since 1940. In the early days of the School the students were farmers. The Schools evolved into continuing education courses for tax practitioners and in 1979 approximately 3,909 tax practitioners participated in Illinois alone. The textbook, which is coauthored each year by C. Allen Bock, Professor of Agricultural Law, has now been adopted for similar use in 27 states.

38. For a list of nine law schools with agricultural law programs, see Hamilton, *The Importance of Agricultural Law in the Law School Curriculum*, 2 AGRICULTURAL L.J. 31, 38 n.3 (1980). In addition to those, an agricultural law course is taught at Southern Illinois University and perhaps other schools.

Some agricultural law programs at law schools have fallen by the wayside, however. For example, the Iowa Agricultural Law Center was initially created in 1954 by a cooperative arrangement between the Division of Agriculture, Iowa State College and the College of Law, University of Iowa. In 1955 the United States Department of Agriculture became a third partner in the Center. The Center was a novel experiment, which attracted high caliber people such as Marshall Harris and John O'Byrne in interdisciplinary research applicable to agriculture. It had a number of success stories. See generally Harris, *Legal-Economic Interdisciplinary Research*, 10 J. LEGAL EDUC. 542 (1958). The Agricultural Law Center is now defunct although its publications are still in demand. See Hamilton, *supra*, at 35. In light of the reduced number of journal articles addressing agricultural law issues during the 1950s and early 1960s, perhaps the time was not quite

A more recent event is the development of a Graduate Program in Agricultural Law at the School of Law, University of Arkansas. This program is still in its formative stages but the director for the program has already been hired,³⁹ and the tentative curriculum includes courses from a number of areas that impact agriculture such as agricultural taxation, estate planning for farmers and ranchers, federal and state regulation of agriculture, commercial law, agricultural finance, and environmental and natural resource problems in agriculture.

The continued growth and changing character of agricultural law programs at both the undergraduate and law school level is indicative of the renewed interest in agricultural law noted by Professor Kershen in his introduction to the 1976 *South Dakota Law Review* symposium on agricultural law.⁴⁰ It is also an indication of the maturing process touching this subject in recent decades. Many of the reasons for this growth and maturation have been noted in previous paragraphs and additional reasons have been suggested by others.⁴¹

Other Recent Developments in Agricultural Law

Several other events are worthy of mention in completing the stage for a discussion of Harl's treatise on agricultural law. The first is the establishment of a journal devoted to the dissemination of helpful information regarding every phase of legal practice relating to agriculture. *The Agricultural Law Journal* was first published in 1979 and presents a promising medium for the development of agricultural law literature and scholarly but practical communication among the growing number of law practitioners and others with interests in agricultural law.

A second event is the creation of a professional association tentatively called the American Agricultural Law Association. Two preliminary meetings have already been held, one sponsored by the Farm Foundation and held in Chicago during December 1980, and the second held at the University of Illinois during July 1980 in conjunction with the annual meeting of the American Agricultural Economics Association. A formal corporate structure for the association was adopted at the December

right for this kind of endeavor. See also Ellis, *Collaboration Between Law and Agricultural*, 7 J. LEGAL EDUC. 65 (1954). Ellis discusses the Iowa Law Center and also the flirtation with agricultural law by other law schools including Yale. *Id.* at 68-69. His discussion of Beuscher's work at Wisconsin would suggest that the Wisconsin Agricultural Law Program perhaps should have been characterized as the hybrid model, see note 15 *supra*, rather than as a College of Agriculture model. Ellis, *supra*, at 67-68.

The agricultural law program at the School of Law, University of California-Davis, provides additional insights into the difficulties that can be encountered in launching such a program. See Barrett, *Introduction to Agricultural Law at Davis*, 11 U.C.D. L. REV. xi (1978).

39. Professor J. W. Looney.

40. Kershen, *Introduction to 21 S.D. L. REV.* 479 (1976) (Symposium on Agricultural Law).

41. See *id.*

1980 meeting at the University of Minnesota Law School. Although an international association of persons working in agricultural law in Western Europe and Central and South America has existed for some time,⁴² the development of such an association in the United States is a relatively new phenomenon.⁴³

HARL'S TREATISE ON AGRICULTURAL LAW: A REVIEW

Now that the historical development of the subject of agricultural law has been sketched, Professor Harl's treatise can be examined. What is the general scope and organization of *Agricultural Law*? What insights can be gained by a detailed analysis of at least one of its major divisions? To what extent does it even attempt an integration of law and economics? For whom is it likely to be of most benefit?

General Scope and Organization

Since agricultural law is a potentially boundless subject, one would expect Harl's treatise to be sweeping in its scope. Let there be no doubt, that expectation is fulfilled. This broad scope, coupled with the considerable depth of treatment accorded the various subjects, results in a treatise with fifteen volumes already published or nearing completion—each volume containing approximately 700 to 900 printed pages, if the first six volumes are any indication.

The number of volumes gives some indication of size, but the basic organizational unit is the chapter with 156 chapters currently contemplated. Chapters with similar subject matter are grouped together under various parts. The number of volumes devoted to each part reflect the relative contributions of the subject areas to the treatise. The titles of the substantive parts published as of October 1980 and the approximate number of volumes devoted to each are as follows: Civil Liabilities (1½), Environmental Law (½), Labor Regulation (1), Income Taxation (¾), Social Security and the Federal Unemployment Tax Act (¼), and Estate Planning (2). The titles of the remaining parts and the approximate weight accorded each are anticipated to be as follows: Federal Regulation (4½), State and Local Regulation (½), Agricultural Cooperatives (1), Commercial Law (½), and Property Law (¾). All of these parts are listed in the order of their appearance in the treatise.

To the legal eye the subjects noted above seem quite familiar. With the addition of just a few more subjects, an entire law school curriculum appears. With few exceptions, Harl has chosen the traditionally recognized divisions of law as the basic divisions of his treatise.

42. This information was derived from the author's interview with Dr. Horst Winkler, Institut für Landwirtschaftsrecht der Universität Göttingen, West Germany, in Göttingen on June 27, 1978.

43. An earlier effort by Professor Krausz of the University of Illinois met with some success but could not be sustained.

A More Detailed Look at One Particular Part

Because the treatise encompasses so many traditionally recognized divisions of law, some which have become entire treatises themselves,⁴⁴ one might speculate that Harl has attempted nothing less than an encyclopedia of law. The principal characteristic that makes Harl's work a treatise of agricultural law rather than an encyclopedia is the same unifying thread that patches together the subject of agricultural law: the applicability of these legal principles to agriculture. This important characteristic is readily discovered in a detailed review of any part.

For example, Part 4 is entitled, "Labor Law."⁴⁵ It contains eight individual chapters: Agricultural Exclusion Under the National Labor Relations Act; The Fair Labor Standards Act; Occupational Safety and Health Act; Federal Regulation of Migrant and Seasonal Agricultural Labor, the Farm Labor Contractor Registration Act; Workers' Compensation: Farmers' and Ranchers' Liability for Employees' Injuries; Unemployment Compensation (which is still to be developed); State Regulation of Labor-Management Relations; and State Regulation of Farm Labor.

Greater insight into the nature of the treatise becomes apparent upon closer examination of several of these chapters. Chapter 17, The Fair Labor Standards Act (FLSA), contains 184 pages of which 113 specifically address the definition of agriculture under the FLSA and the agricultural exemptions thereto. Another twenty-three pages address the child labor provisions of the FLSA and these pages emphasize the special rules applicable to the employment of child labor in agriculture. To illustrate by simple example: in practice youth employed in nonagricultural enterprises generally are protected by the FLSA until they reach age eighteen (e.g., their employment in specifically identified hazardous occupations is prohibited); youth employed in agriculture, however, are only protected by the act until age sixteen. This rule is easy to state, but one does not find the rule expressly stated in the statutes. Rather the rule is the product of a careful study and synthesis of numerous statutory provisions and administrative regulations. In his treatise, Professor Harl has worked through this synthesis of child labor laws and many other laws. The practical conclusions are articulated in

44. See, e.g., F. GRAD, *A TREATISE ON ENVIRONMENTAL LAW* (1973).

45. The author has skipped the first substantive part, civil liabilities, just as he might reach into the middle of a bushel basket to select a sample apple. In fact the civil liabilities part contains eleven chapters: Definitions, Scope and Overview; Strict Liability, Farming Activities; Strict Liability, Farm Animals; Personal Injury on the Farm Premises; Liability of Farmers and Ranchers for Employees' Torts; Trespass to Real Property and Chattels, Conversion; Products Liability (including a table of products liability cases relating to agricultural matters); Liability of Landlord and Tenant; Liability for Spread of Contagious Animal Diseases; Liability of Veterinarians for Malpractice; and Liability for Spread of Weeds. In the chapter entitled, "Strict Liability: Farm Animals," one would find the current rules of each individual state regarding civil liability for damage caused by domestic animals.

understandable prose while the relevant statutes and regulations are often footnoted verbatim.

Part 4, Chapter 23, State Regulation of Farm Labor, is also worthy of closer examination because it illustrates the thorough and scholarly approach that has been taken regarding state legislation of importance to agriculture. In general, this chapter discusses the extent to which state labor legislation fills the void created by the frequent agricultural exemptions in federal labor laws. State laws on minimum wages, maximum hours and overtime compensation, occupational safety and health, fair employment, child labor laws and migrant labor are all addressed.

In the area of minimum wage laws, for example, Harl notes the eight states that have not enacted legislation and notes that many of the remaining states exempt agricultural workers in some manner (By way of footnote he identifies cases upholding the constitutionality of these exemptions.). He further identifies three groupings into which the remaining states can be slotted: First, those providing an absolute exemption for agricultural labor; second, those which provide a partial exemption; and last, those that provide no agricultural exemption. In footnotes he identifies which states fit into which groups, provides the specific reference to individual state codes, and provides illustrations of the partial exemption and citations to the specific state codes utilizing the partial exemption.

In the area of state fair employment legislation, Harl has developed a chart summarizing the law of each state. By examining the chart one learns that Illinois, for example, generally requires fifteen employees for jurisdiction; prohibits discrimination on the basis of national origin, race, religion, sex, age, and handicap; and that these rules apply to agriculture. Citations to the law of each state are provided in footnotes so that the reader can specifically verify the general information contained in the chart.

Extent to Which the Treatise Integrates Law and Economics

Given the breadth of legal subjects discussed in *Agricultural Law*, one might assume that there would be little room, even in fifteen volumes, to weave many economic threads through the patchwork of this subject. Closer examination suggests that such an assumption is nearly correct. As a general proposition, *Agricultural Law* is a discussion of law as it is. When appropriate a historic perspective is often provided (*e.g.*, the gradual narrowing of agricultural labor law exemptions) or trends suggesting future changes are noted (*e.g.*, the trend away from differentiating the duty owed invitees, licensees, and trespassers by owners and occupants of land). But this dynamic aspect of the law is generally developed in the context of shifting public policies rather than economic efficiency or profit maximization.

A few exceptions to this general proposition can be found. For

example, the economic concept of "shifting costs" is mentioned in the chapters on strict liability and workers' compensation, but even here there is no sophisticated development of these concepts nor is there any presentation of empirical data. This observation is made not in a critical sense, but rather as a statement of fact. The legal dimensions of agriculture law are almost overwhelming by themselves. To have even attempted a systematic integration of law and economics throughout the treatise would have been impossible.

One major exception to this general proposition concerning the integration of law and economics does exist, however. Chapter 45 is entitled, "Planning to Maximize Family Wealth" and comes complete with models, mathematical equations, schematics, charts showing "additional costs in discounted present value dollars," and narrative discussion of such economic concepts as optimization. For the lawyer-econometrician, Chapter 45 is a bonanza. But even for the lawyer without sophisticated economic skills, Chapter 45 is a reminder that such factors as the sequence of deaths, the amount of the marital deduction, the expected rates at which wealth will grow or be consumed over time, and the possibility for using life income interests are very important. The chapter also introduces the practitioner to the possibilities of computer assisted estate planning analysis.

Practitioners and other lawyers who have an aversion to econometrics (or, for that matter, even to addition) should not be misled by the above discussion as far as the total character of the two volumes dealing with estate planning is concerned. These volumes are practitioner oriented and they collectively provide a superb treatment of agricultural estate planning.

Likely Beneficiaries of the Agricultural Law Treatise

For approximately six months preceding the preparation of this Review, this author has had an opportunity to read, study, utilize, and reflect upon the first six volumes of *Agricultural Law*. During this time he has found the treatise to be a most valuable tool as a reference for classroom teaching, preparing continuing legal education materials, and answering legal questions arising from actual controversies and even pending litigation. Because of its breadth and depth the treatise is an invaluable tool to anyone involved in teaching or practicing agricultural law. More specifically, the first six volumes in existence at the time of this writing and all of the remaining volumes scheduled for publication in 1981, with the possible exceptions of volumes 9-12 dealing with government regulation, can help practitioners rise to the challenge of providing needed legal counsel to the new farmer in this new age. Even those volumes dealing with government regulation are likely to be of some assistance to legal counselors as their advising roles expand in the years ahead. As a corollary, those same volumes dealing with government

regulation may well be more useful to administrators in various agricultural related departments and agencies than the other volumes of primary use to lawyers.

Legal scholars may also find *Agricultural Law* to be fertile ground. The law applicable to agriculture invites critical review and has never before been brought together in such a meaningful way to facilitate this critical review. For Professor Harl's sake, however, scholars should not get carried away. They should provide a little time for repose before suggesting transformations in agricultural law that would require complete revision of the treatise.⁴⁶

SOME CLOSING THOUGHTS

Professor Harl's treatise on agricultural law is not a paradox after all. Quite the contrary, the development and timing of *Agricultural Law* appears entirely consistent with the evolution of this subject over the past century.

Many of the same reasons that helped forge the initial development of agricultural law into a semicohesive subject in the first half of this century are still relevant today, albeit in modified form. For example, just as the development of manuals, extension pamphlets, and circulars were—and continue to be—needed because of farmers' sheer isolation, so too has it been necessary to develop a sophisticated treatise for the farmers' increasingly important legal counsel, who are also geographically dispersed. The legal practitioners serving agriculture, perhaps members of small firms or even sole practitioners, often have limited access to complete law libraries as they pursue their law practices. Accordingly, the development of a treatise containing a thorough analysis of law relevant to their agricultural clients, including specific statutory language and significant reproductions of important federal regulations, meets a relatively new and very important practical need.

The second reason for the initial development of agricultural law as a meaningful division of the law—the unique treatment accorded agriculture by legal institutions—also remains as viable today as it did a half century ago, and perhaps even more so. In such substantive law areas as labor, tax, and protection of the environment, a recurring theme is the distinctive treatment of the agricultural sector because it is characterized by family-owned businesses or because the businesses are not concentrated in urban areas. These same reasons account, in part, for the widespread use of agricultural cooperatives and the development of separate governmental or quasi-governmental agencies, such as departments of agriculture or the agricultural credit system, designed to meet the unique needs of this economic sector. The special legal treat-

46. On a related but more serious note, the treatise is designed for intermittent update and an updating service is offered by the publisher.

ment of agriculture is obviously important to practitioners, but it also is important to those in our society whose task is to evaluate our legal institutions and reaffirm their appropriateness to contemporary society.

Thus, the publication of *Agricultural Law* is not a paradox. Rather it is a milestone in a dynamic dimension of law. It comes in the wake of a fascinating evolution of subject matter, a dramatic upsurge in interest, a significant shift in the treatment of agricultural law by our universities, the creation of a journal devoted exclusively to the same subject, and the embryonic growth of a national association for professionals working in the field. And fortunately, *Agricultural Law* comes in a form that is readable, scholarly, well documented, and properly focused on the practical and unique domestic aspects of this resilient subject.