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Agriculture and Changing Legal Concepts in an Urbanized Society

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AGRICULTURE AND CHANGING LEGAL CONCEPTS IN AN URBANIZED SOCIETY

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The average American takes his food and fiber supply very much for granted. He gives little, if any, thought to the process by which foods and fibers make their seemingly miraculous appearances in supermarkets and boutiques. When some thought is given to the human element in the production of these items, the "farmer" is vaguely and inconsistently conceived of as a cross between a noble visionary worthy of residence on the banks of Walden Pond and a country bumpkin growing fat on government subsidies. This popular view of the American agronomist of the 1970's is patently false but nonetheless revealing of the ill-defined role and self-image of those who produce America's unequaled quantities of food and fiber.

The present-day American farmer, like his urban brother, is the product of a definite evolution that has unfolded in response to a variety of problems and crises. This is not to say that the agricultural evolution has proceeded along the same lines or at the same speed that has characterized change in the urban scene. In fact, when one today encounters in the agricultural segment of society adherence to those ideals of individualism and *laissez-faire*, which characterized the urban scene fifty or more years ago, one is tempted to stress the difference in the speeds at which the urban and rural segments of American society have evolved. Yet, certain "axiomatic truths" of traditional rural America still find their counterparts in urban America. The echoes of Jean Jacques Rousseau[1] and John Locke[2] still resound with periodic frequency. The natural man who lives in harmony with fellow beings and nature is transposed into the modern environmentalist thundering about the indiscriminate desecration of nature. The self-sufficient farmer envisioned by Thomas Jefferson[3] is still lauded by those who would retreat from the urbanized society of today to the bliss of communal living. Locke's treatises on civil government[4] have left an indelible imprint on the concepts of individual property rights, which cannot be effaced in today's heterogeneous society. Refinements of these pronouncements combined with the concept

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1. *See* A. WILLIAMS, THE CONCEPT OF EQUALITY IN THE WRITINGS OF ROUSSEAU, BENTHAM, AND KANT (1907).

2. *See* J. LOCKE, THE SECOND TREATISE OF GOVERNMENT (1946).

3. *See* VIRGINIA COMM'N ON CONSTITUTIONAL GOVERNMENT, WE THE STATES 227-74 (1964).

4. See note 2 *supra*.

of the "common good" or "public weal"[5] have woven a web so intricate that they continue to underlie much of the present law of property rights.

Nonetheless, the greater fervor of devotion to "traditional" ideals and philosophies found in the agricultural community has led to considerable economic and philosophical conflict between the urban and rural elements of American society. This clash has resulted in diverse national legislation largely promulgated by the urban forces ostensibly seeking to control the farmers' ultimate destiny. Such legislation includes the "Granger Laws" of the 1880's,[6] the Interstate Commerce Act,[7] the Clayton Act,[8] the AAA Acts,[9] and the Packers and Stockyards Act.[10]

The first substantial glimmer of economic change appeared in the 1930's when depression and overproduction cast their shadow upon the farming scene. The early "technocrats"[11] of this era began to advocate legalization of

5. *See generally* T. MORE, UTOPIA (1969).

6. The Granger Laws of the late 1800's were developed in various states (notably Illinois and Iowa) to regulate grain storage by warehousemen, and transportation of freight and passengers by railroads in order to protect the public's interest in such use. These laws, some of the first price-setting and licensing statutes regulating private use of private property, were upheld by the Supreme Court in 1876. Munn v. Illinois, 94 U.S. 113 (1876); Chicago, Burlington & Quincy R.R. v. Iowa, 94 U.S. 155 (1876).

7. The Interstate Commerce Act of 1887, 49 U.S.C. §§1 *et seq.* (1970), was adopted originally to regulate the transportation of property and persons, and eliminate railroad concessions of any kind "to the end that persons in the stream of transportation may carry on their business on an equal basis with their competitors." Shaw Warehouse Co. v. Southern Ry., 288 F.2d 759, *rehearing denied*, 294 F.2d 850 (5th Cir. 1961), *cert. denied*, 369 U.S. 850 (1962), *rehearing denied*, 372 U.S. 950 (1963). Through several amendments the regulatory power of the Interstate Commerce Commission has been broadened to include supervision over all aspects of interstate common carriers, except airlines.

8. The Clayton Act, 15 U.S.C. §§12-27, 44; 29 U.S.C. §§52, 53 (1970), passed in 1914, enlarged the scope of the Sherman Act so that it became unlawful for a seller engaged in commerce to discriminate in prices offered similar purchasers where such price differentials may act to substantially lessen competition or tend to create a monopoly. 15 U.S.C. §13(a) (1970). The Act allowed private parties injured in their business or property by illegal selling practices to institute proceedings, 15 U.S.C. §15 (1970), and authorized the Federal Trade Commission, the Federal Communications Commission, the Civil Aeronautics Board, and the Federal Reserve Board to issue orders for compliance, 15 U.S.C. §21 (1970), and institute proceedings in federal district courts in the event of further violation. 15 U.S.C. §25 (1970).

9. The Agriculture Adjustment Act (AAA), 7 U.S.C. §§601 *et seq.* (1970), sought to raise and stabilize the price of farm products destined for interstate commerce. Production of certain farm commodities, which were in surplus supply, was limited and rental or benefit payments made for crop reduction. For those goods that could be produced the Act established quality, maturity, and grading and inspection standards.

10. The Packers & Stockyards Act of 1921, 7 U.S.C. §§181 *et seq.* (1970), was designed to remove discriminatory practices used in the livestock and meatpacking industries. This Act was not a production control, even though inspection and regulation of stockyards and meatpacking plants were authorized, but a price control mandating competitive market prices and preventing discriminatory and deceptive practices were made possible through monopoly control.

11. The technocratic movement developed during the early 1930's and advocated a government of technical experts that would aim for production and distribution to the limits of industrial capacity. Often a technocrat today is one exercising managerial authority. *See* WEBSTER'S NEW INTERNATIONAL DICTIONARY 2348 (3d ed. 1971).

measures to control the farmers' production activities. It was at this time that soil conservation[12] and federal government subsidies[13] were employed as countermeasures to overproduction. The word "parity" also emerged as part of a concept to ensure to the farmers a decent income in return for their agricultural production.[14] Thus, innovations occurred that curtailed the individualism of the farmer and obstructed the free operation of the laws of supply and demand.

Although such changes were occurring on the national scene, the agricultural scene in Florida was different. In 1925 Florida had experienced a "land boom and bust,"[15] forcing many individuals who came to Florida to make fortunes in land speculation to turn to the more basic task of making a living from the soil. In the central areas of the state a flourishing citrus industry emerged,[16] and around the shores of Lake Okeechobee an important winter vegetable complex developed.[17] In the northern part of Florida the pine tree furnished the vital resource for a new paper and pulp industry.[18] Also, local cattlemen began to import breeding stock to improve the quality of their herds.[19] Added to this was a definite increase in population within the state,[20] which supplied a readymade demand for many farm products.

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12. Soil conservation legislation was enacted in Florida in 1937 "to control or prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, development and utilization of soil and water resources and the disposal of water." FLA. STAT. §582.04 (1973). The policy of the state in setting up the Soil and Water Conservation Council and the Soil and Water Conservation Districts was not only to control and prevent soil erosion but to "preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, [and] protect public lands." FLA. STAT. §582.05 (1973). The soil and water conservation districts have power to conduct surveys and investigations relating to soil erosion and proper utilization of soil and water resources, FLA. STAT. §582.20(1); to carry out preventive and control measures for flood prevention, development, and utilization of soil and water resources, methods of cultivation, and changes in use of land, FLA. STAT. §582.20(3); to purchase, lease or acquire by gift or grant property, FLA. STAT. §582.20(5); to make available to landowners fertilizer, seeds and machinery that will assist such landowners in carrying out conservation operations, FLA. STAT. §582.20(6); to develop comprehensive conservation plans for the district, FLA. STAT. §582.20(8); to adopt and enforce land-use regulations for the district, FLA. STAT. §§582.21 *et seq.*; and to levy an annual ad valorem tax on taxable property within the district to provide funds necessary for district obligations, FLA. STAT. §582.44. The land-use regulations adopted in the districts must be observed by all state agencies that have regulatory power over lands also located within such districts. FLA. STAT. §582.29.

13. See note 9 *supra*.

14. "Parity" is an equivalent ratio between the farmers' current purchasing power and their purchasing power at a selected base period; that is, a ratio between agricultural and nonagricultural prices. Parity between the prices is maintained by governmental support of the commodity prices at the level selected for the base period.

15. 2 J. DOVELL, FLORIDA: HISTORIC, DRAMATIC, CONTEMPORARY 769-70, 782-83 (1952).

16. *Id.* at 857-60.

17. *Id.* at 749.

18. *Id.* at 813.

19. *Id.* at 871-75.

20. According to U.S. Census figures, Florida's total population in the following years was:

Importantly, during this emerging process local and state government was controlled by rural inhabitants.[21] Under the constitution of 1886 each county had at least one representative in the legislature and some voice in the Senate.[22] In such a setting the champions of individual property rights and *laissez-faire* were predominant. It was consequently an era in which much water and drainage legislation was enacted.[23] Because of increased demand for agricultural products, wasteland and wild lands were drained and improved pastures appeared everywhere. Attendant with this process, water and drainage districts were set up[24] and intensive cultivation of new lands flourished without regard for environmental factors that later overturned the natural balances. Irrigation projects were also embarked upon without adequate study or background, and chemical fertilizers and insecticides were used indiscriminately by the farmers in order to secure added production.

This is not to say that there were not occasional sounds of alarm from individuals who thought that *laissez-faire* was running rampant to the detriment of the rights of society and the environment.[25] These voices, however,

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1920	968,470	1950	2,771,305
1930	1,468,211	1960	4,951,560
1940	1,897,414	1970	6,789,443

FLA. BUREAU OF ECONOMIC & BUSINESS RESEARCH, FLORIDA STATISTICAL ABSTRACT 1973, at 16 (1973).

21. See note 29 *infra.*

22. FLA. CONST. art. VII, §3 (1886).

23. Initial drainage legislation in Florida was adopted in 1913, Fla. Laws 1913, ch. 13-6458, §1, at 284, and authorized formation of drainage districts by the Board of Drainage Commissioners or the owners of wet or overflowed lands. A state Board of Drainage Commissioners had been organized in 1905, Fla. Laws 1905, ch. 5-5377, §1, at 22, and was given power to borrow money, issue notes, and use the proceeds of the drainage tax levied in any district. Drainage districts organized under the 1913 Act (and subsequent modifications of it) had power to adopt a "Plan of Reclamation" for overflowed lands or those damaged by water, Fla. Laws 1913, ch. 13-6459, §9, at 191; to levy taxes on land within the district, *id.* §10, at 191; to build or construct any works necessary for the improvements recommended in the "Plan of Reclamation," *id.* §16, at 198; to alter, widen or clean up the course and flow of any canal, river or water course in the district, *id.* §26, at 210; and to take lands for rights-of-way necessary for protection and reclamation of the area, *id.* §29, at 219. Various districts were organized over the years under this legislation, resulting in confusing jurisdictional problems. As a result, the legislature created, in 1949, the Central and Southern Flood Control District, Fla. Laws 1949, ch. 49-25270, and in 1961 the Southwest Florida Water Management District, Fla. Laws 1961, ch. 61-691—both districts taking over the powers and obligations of earlier districts within their boundaries. The Water Resources Act of 1972 changed the structure of the water management districts, FLA. STAT. §373.149 (1973), removing their taxing power, except for the two districts created in 1949 and 1961. Current districts are regulated under FLA. STAT. ch. 373 (1973). See note 24 *infra.*

24. Under the Florida Water Resources Act of 1972, FLA. STAT. ch. 373 (1973), six water management districts are set up to provide for management of water and related land resources. The districts are: Northwest Florida Water Management District, Suwanee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District, Central and Southern Florida Flood Control District, and the Ridge and Lower Gulf Coast Water Management District. FLA. STAT. §373.069 (1973).

25. An early air pollution study for Hillsborough County was conducted in 1962. It was concluded from this study that certain locations in the county experienced air pollution

were few in number and completely outweighed by the forces in control. Nevertheless, the unprecedented population explosion that occurred in Florida from the 1960's onward[26] carried within itself the seeds of change. The urban forces began to make determined onslaughts to diminish the power of the rural legislature.[27] The cry "one man-one vote," aided by federal judicial interpretation,[28] brought about widespread redistricting that resulted in a new legislature dominated by urban champions.[29] Suddenly the agricultural interests realized their rights were no longer protected by a "friendly" political legislature. As this fact became more apparent, farmers turned to the courts to protect their basic property rights and preserve the *laissez-faire* philosophy.

During this transition period the farmer realized that his individualistic philosophy was not shared by all the inhabitants of Florida. New alien symbols began to appear on his horizon, which concerned the rights of citizens to clean air, pure water, and a pollution-free environment.[30] In another area voices were heard criticizing farmers' treatment of migrant laborers,[31] and in still another direction the farmers' sacred cow, the ad valorem tax system, was being attacked by those who believed that property taxes should be based on land's "full value" rather than on arbitrary values determined by the local tax assessor.[32]

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problems and that a fully funded county-wide air pollution control program be set up to prevent further deterioration to air quality resulting from expansion of population and industry. FLORIDA STATE BD. OF HEALTH, BUREAU OF SANITARY ENGINEERING AIR POLLUTION IN HILLSBOROUGH COUNTY, FLORIDA, 1962 (1963).

26. See note 20 *supra.*

27. By definition of the U.S. Bureau of the Census, urban dwellers are: "[A]11 persons living in (a) places of 2,500 inhabitants or more incorporated as cities, boroughs, villages; (b) the densely populated settled urban fringe, including both incorporated and unincorporated areas, around cities of 50,000 or more; and (c) unincorporated places of 2,500 or more outside any urban fringe." FLA. BUREAU OF ECONOMIC & BUSINESS RESEARCH, FLORIDA STATISTICAL ABSTRACT 15 (1968). The urban-rural population gap in Florida has widened considerably in the last 20 years. In 1950 there were 1,813,890 persons in urban areas and 957,415 in rural areas. In 1960 there were 3,661,383 persons in urban areas and 1,290,177 in rural. *Id.* at 24. In 1970 there were 5,468,137 persons in urban areas and only 1,321,306 in rural areas. FLORIDA STATISTICAL ABSTRACT, *supra* note 20, at 17.

28. Baker v. Carr, 369 U.S. 186 (1962).

29. Article VII, §3 of the 1886 Florida constitution provided for: "three (3) Representatives to each of the five most populous counties, and two (2) Representatives to each of the next eighteen more populous counties, and one Representative to each of the remaining counties . . . ." But in the new 1968 Florida constitution, article III, §1 provides for one representative from each representative district; and under §16(a) the legislature must periodically reapportion the state "in accordance with the constitution of the state and the United States" into 80-120 representative districts.

30. See note 61 *infra.*

31. *See* digest on hearings held by four congressional subcommittees on matters relating to farm migrant workers, 25 CONG. Q. ALMANAC 757 (1969); and amendments of the Public Health Service Act extending family health services to migrant workers, 28 CONG. Q. ALMANAC 530 (1972); 26 CONG. Q. ALMANAC 190 (1970). *See also* R. DE TOLEDANO, LITTLE CESAR (1971) for an overview of occurrences in the public arena during the late 1960's among California farmers, grape pickers, and Cesar Chavez.

32. For a discussion of the development of the ad valorem tax in Florida, see references cited note 33 *infra.*

The agricultural community belatedly realized that it must fight if it intended to preserve its continued existence as a *laissez-faire* enclave in a pluralistic society. The struggle for preservation of the agricultural community's traditional concepts and its concomitant acceptance of new societal values and needs has occurred on three main fronts: (1) land valuation and taxation, (2) land use control, and (3) farm labor regulation. The purpose of this article is to analyze these three areas within the Florida and national agricultural context.

Legal Concepts of Agricultural Taxation in Florida

Until recently, the local county tax assessor was the nucleus around which the tax assessment process revolved.[33] To a large extent this is still true in the less populous counties of northern Florida. The original function of the tax assessor was to evaluate land for tax assessment purposes.[34] Where urbanization was not an important factor the process could proceed on an individual basis with relative fairness and equity. However, as population pressures developed within the state and state school tax revenues for individual counties became tied to the taxing process, the need for a more unified assessment process became apparent.[35] Difficulties arose in attempting to bring forth a workable solution to this vexatious problem,[36] and certain salient factors remain as barriers preventing an easy solution to the problem.[37]

First and foremost is the judicial task of interpreting legislative and constitutional action in this intricate field. The Florida Constitution of 1885 required that the legislature provide for a "*uniform* and *equal* rate of taxation . . . and shall prescribe such regulations as shall secure a *just* valuation of all property."[38] Under the new 1968 constitution *just valuation* has been retained and *uniform and equal* has been reworded to *uniform rate within each taxing unit.*[39] This merely legitimizes what has already been implicit in the assessment process. The 1968 constitution also contains the proviso

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33. *See* Wershow, *Agricultural Zoning in Florida—Its Implications and Problems,* 13 U. Fla. L. Rev. 479 (1960) [hereinafter cited as *Agricultural Zoning*]; Wershow, *Ad Valorem Taxation and Its Relationship to Agricultural Land Tax Problems in Florida,* 16 U. Fla. L. Rev. 521 (1964) [hereinafter cited as *Ad Valorem Taxation*]; *Wershow, Ad Valorem Assessments in Florida—Whither Now?,* 18 U. Fla. L. Rev. 9 (1965) [hereinafter cited as *Ad Valorem Assessments*]; Wershow, *Recent Developments in Ad Valorem Taxation,* 20 U. Fla. L. Rev. (1967) [hereinafter cited as *Recent Developments*]; Wershow, *Regional Valuation Boards—A British Answer to Ad Valorem Assessment Problems in Florida,* 21 U. Fla. L. Rev. 324 (1969) [hereinafter cited as *Regional Valuation Boards*]; Wershow, *Ad Valorem Assessment in Florida—The Demand for a Viable Solution,* 25 U. Fla. L. Rev. 49 (1972) [hereinafter cited as *Viable Solution*].

34. *Ad Valorem Assessments, supra* note 33, at 9. Pursuant to amendment to Fla. Const. art. VIII, §1(d) (effective Jan. 7, 1975) the title of "county tax assessor" has been changed to "property appraiser."

35. *Ad Valorem Taxation, supra* note 33, at 523, 525.

36. *See Ad Valorem Taxation, supra* note 33.

37. See note 33 *supra.*

38. Fla. Const. art. IX, §1 (1886) (emphasis added).

39. Fla. Const. art. VII, §2 (1968) (emphasis added).

that "agricultural land . . . may be classified by general law and assessed solely on the basis of character or use,"[40] thereby putting to rest the legal controversy over the principle of preferential land use assessment in Florida.[41]

The resolution of this constitutional issue, however, merely shifted the battlefield to other areas. Primary concern centered on the attempt to define a bona fide agricultural enterprise or undertaking.[42] Although at first glance this would seem to be a simple matter, upon adequate examination and analysis many pitfalls were soon apparent, and questions of fact became interlaced with questions of law. Moreover, certain guidelines enunciated by the Department of Revenue[43] to aid the local tax assessors merely complicated an already complex issue.

Adding to the difficulty was the problem of distinguishing between the so-called land speculator and the bona fide farmer.[44] The increased urbanization of certain Florida counties increased the need for lands for uses other than farming or agriculture. Many nonfarmers took advantage of this opportunity to temporarily enter the farming scene in order to enjoy the benefit of a land rate based on agricultural use while holding their land for subsequent increased valuation.[45] Additionally, the legitimate farmer whose land was on the periphery of metropolitan development was loathe to deprive himself of the benefits of increased demand for and valuation of his land.[46]

To further complicate the problem, opponents of preferential assessment argued that the farmer was receiving an unfair tax advantage and should be held accountable for it to the public.[47] The outcries were expressed variously by changes in the form of "no full value," "no true value," or "no fair market value."[48] Opponents attacked agriculturists on philosophical and economic grounds. Among the devices commonly used were the "rollback" or deferred taxation concept.[49] This was aimed at preventing the farmer from changing the use of his land despite its increased valuation due to the proximity of urban development.

Under the deferred taxation concept, two values were placed on preferentially assessed agricultural land. The first was its "actual" or "true" value; the second was its valuation based on agricultural use.[50] At the time of sale of such land for other than agricultural use, a fixed percentage of the difference between the true or market value and the agricultural use value

40. *Id.* §4.

41. *Regional Valuation Boards, supra* note 33.

42. *Viable Solution, supra* note 33, at 52-56.

43. FLORIDA DEP'T OF REVENUE, FLORIDA TAX ASSESSOR'S GUIDE: REAL ESTATE §§3.5-12 (updated as changes are received).

44. *See Ad Valorem Taxation, supra* note 33, at 525-26; *Viable Solution, supra* note 33, at 52-56.

45. *See* note 44 *supra*. *See also Agricultural Zoning, supra* note 33, at 479.

46. *See Agricultural Zoning, supra* note 33, at 479.

47. *See Agricultural Zoning, supra* note 33, at 488.

48. *See Ad Valorem Assessments, supra* note 33.

49. *Recent Developments, supra* note 33, at 12-13.

50. *Id.* at 12.

would be recaptured by the local governmental body.[51] It was very difficult for the average farmer to accept this concept, for he believed his land was serving a useful public function by producing food and fiber, and that he should not be unduly penalized. He thought he had received no benefit beyond what was owed him and consequently was bitterly opposed to the rollback.[52] He argued that he received few public services and therefore was entitled to the valuation of land as a tool of production on a use basis. He believed he did not receive preferential assessment in any way. The farmer likewise has had little sympathy for those who advocate surrender of the development rights to his land in return for tax concessions.[53] Such a plan has been tried in California and Hawaii[54] but has not been successful.[55]

Both the rollback and development rights amending plans still met resistance from farmers asserting that their property tax payments were too large relative to their incomes. For that reason the farmer's ability to pay was inadequate, and farmers were penalized merely for possession of land. Farmers also argued that they required fewer services from governmental bodies than were required by urban residents.[56]

To the average farmer in Florida who, for many years, has had no net taxable income, the burden of a fixed property tax has in many instances become nearly confiscatory, forcing him to sell his land holdings and migrate to the city.[57] Once the ex-farmer becomes a city dweller he is no longer a producer of food and fiber; he becomes instead one who demands further services from the governmental unit. Such a result raises tax bills. Although a limit or "circuit breaker"[58] on the farm property tax overload might provide an answer, farmers' inate conservatism probably would prevent them from embracing such an untried practice.

There is consequently no one solution regarding agricultural land taxation assessment that satisfies both the farmers' *laissez-faire* attitude toward property and the environmental factors thrusting themselves into Florida agricultural land considerations. Perhaps it is too much to ask for such

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51. *Id.*

52. U.S. DEP'T OF AGRICULTURE, STATE PROGRAMS FOR THE DIFFERENTIAL ASSESSMENT OF FARM AND OPEN SPACE LAND, Report No. 256, at 6 (April 1974) [hereinafter cited as STATE PROGRAMS].

53. *Recent Developments, supra* note 33, at 13-14.

54. In California, the Williamson Act (the Land Conservation Act of 1965), CAL. GOV'T CODE §§51,201 *et seq.* (West 1965), authorized the transfer of development rights through contracts with city or county governments. For a general discussion of the provisions of the Act, see STATE PROGRAMS, *supra* note 52, at 18-24. Hawaii enacted in 1961 a tax assessment program for agricultural land based on deferred taxation, HAWAII REV. STAT. §§205-1 *et seq.* (1968). *See also* STATE PROGRAMS, *supra* note 52, at 28-32.

55. For a critical analysis of the California provisions, see Hunter, *Preserving Rural Land Resources: The California Westside*, 1 ECOLOGY L.Q. 330 (1971).

56. *See Ad Valorem Taxation, supra* note 33, at 526.

57. *Id.*

58. The "circuit breaker" concept anticipates a tax credit or rebate when the property tax exceeds a specified fraction of the household income. *See* Tate, *The 1973 Florida Legislative Modest Progress on Environmental and Urban Issues*, 1 FLA. ENVIRONMENTAL & URBAN ISSUES 12 (1973); *What's Wrong with the Property Tax?*, CHANGING TIMES, May 1974, at 11.

a solution. It may be that the answer will only evolve gradually as members of the urban and agricultural communities begin to understand each other better.

Legal Concepts and Land Use Control with Reference to Florida Agriculture

Coincident with the urbanization of Florida, a widespread movement began in various areas of the state to examine what effect this trend would have on Florida's future. It was soon evident that this urbanization[59] was vitally affecting the quality of life within the state. Not only were people's lives affected, the environment was undergoing unusual stress and strain.[60] Many groups of well-meaning individuals began examining and analyzing various phases of the state's ecology. Because each group had its own distinctive objectives, the results of their endeavors were varied and often at odds with each other.[61] It was apparent that what was happening in this area was the result of uncoordinated individual action. Many groups concentrated on air pollution, other groups centered their efforts on water pollution, and still others showed concern for wildlife and wetlands.

Soon the isolated groups began to band together for united action. Led by local affiliates of well-established national organizations such as the Audubon Society and the Sierra Club, they began to put extreme pressure on the local and state political entities to secure remedial action. The Cross-Florida Barge Canal became one of the targets of their activities.[62] They challenged openly its economic worth and denounced the environmental destruction they alleged it would create. The Big Cypress Swamp area was also of vital concern, since it served as a water recharge area for a large portion of Florida.[63] These groups also opposed the large development interests that were creating new cities on virgin land or wasteland. They

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59. See note 20 *supra*.

60. In addition to problems involved in the Cross-Florida Barge Canal and acquisition of the Big Cypress Swamp, the Miami jetport controversy contributed to the environmental stress Florida faced. *See* Brennan, *Jetport: Stimulus for Solving New Problems in Environmental Control*, 23 U. Fla. L. Rev. 376 (1971); Kessler & Teply, *Jetport: Planning and Politics in the Big Cypress Swamp*, 25 U Miami L. Rev. 713 (1971).

61. The diversity of the groups involved in Florida environmental problems is evident from the following partial list: American Littoral Society, Audubon Society, Coalition of Concerned Citizens, Crystal River Protective Ass'n, Environmental Action Group, Environmental Council of Bay County, Environmental Law Society, University of Florida, Florida Defenders of the Environment, Florida League of Women Voters, Florida Wildlife Federation, Greater Venice Area Environmental Council, Gulf Coast Council for Clean Air, Izaak Walton League, Polk County Coalition for the Environment, Save Our Coast, Save Sand Key, Sierra Club, Zero Population Growth.

62. *See* Florida Defenders of the Environment, Inc., Environmental Impact of the Cross-Florida Barge Canal with Special Emphasis on the Oklawaha Regional Ecosystem 1970); C. Welsh, The Economic Prospects of the Cross-Florida Barge Canal Project (1959).

63. *See* Robinson, *Tortious Water and Land Use in the Big Cypress Swamp*, 25 U. Miami L. Rev. 690 (1971).

challenged the dominant philosophy of growth and population creation, which had motivated much of Florida's previous development. Above all, they rejected the *laissez-faire* aspects of unplanned development. They advocated governmental controls at all levels to regulate unrestricted growth and to preserve the environment.[64] As a result of these early activities, one of the nation's first wetlands preservation statutes was enacted by Florida in 1957.[65] This statute primarily dealt with the establishment of bulkhead lines for fill purposes.[66]

The agriculturist, although aware of these environmentalist concerns, did not perceive himself to be one of their primary targets. In fact, through his daily contacts with the land and the forces of nature, he considered himself a member of the team working to conserve the soil and its resources.[67] Long before his city brethren had concerned themselves with preservation of the environment, the agriculturist had undertaken measures to conserve the soil.[68] By means of terracing and contour farming he had turned large eroded areas into productive farmland.[69] Soil Conservation Districts were established to handle drainage problems and to conserve woodlands and wetlands.[70] These districts were managed by farmers themselves through voluntarily elected committees[71] without imposition of outside legal controls. The farmer was thus dealing with his peculiar problems in his own way in order to increase eventually the quality of his own standard of living.

Environmentalists, however, were focusing their sights on more far-reaching goals. They desired to enact basic legislative blueprints to guide the future development of Florida in all environmental matters.[72] In order to achieve these ends environmentalists were willing to break with traditional legal concepts of individual property rights. They strongly emphasized that

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64. Hildebrand, *The Role of Law and the Legal System in Meeting Our Environmental Crisis*, 4 EVIRONMENTAL LAW 77 (1973).

65. FLA. STAT. §§253.12 *et seq.* (1957).

66. FLA. STAT. §§253.122-.123 (1957).

67. See notes 12 *supra*, 71 *infra*.

68. Soil conservation legislation was first passed in Florida in 1937 and the district lines then established are still in operation today. See note 12 *supra*.

69. Terracing and contour farming play a significant role in the measures undertaken by the Soil Conservation Service to control and prevent soil erosion. See note 71 *infra*.

70. See note 12 *supra*.

71. In 1935 the U.S. Secretary of Agriculture was authorized to organize the "Soil Conservation Service," 16 U.S.C. §590(e) (1970), which was designed to "control and [prevent] soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs and maintain the navigability of rivers and harbors." 16 U.S.C. §590(a) (1970). Local administrative areas were designated, none to be larger than a single county, and farmers within these areas elect a committee of three members to represent them at a county convention. 16 U.S.C. §590h(b) (1970). County and state committees are also selected with the state director of Agricultural Extension Service being an ex officio member of the state committee. Thus, in Florida, the farmers' practices are under federal scrutiny from local, county, and state administrative units of the Soil Conservation Service and under additional state and local scrutiny from the Soil and Water Conservation Districts set up under FLA. STAT. ch. 582 (1973). See note 12 *supra*.

72. *See* Kessler & Teply, *supra* note 60, at 748.

time was of the essence if the natural resources of the state were to be preserved. The result of their efforts was the passage, in 1972, of the Florida Environmental Land and Water Management Act.[73]

This important act identified geographic areas of land development and established procedures for regulating activities that affect the environments within those areas.[74] An examination of the purpose of the act is instructive.[75] It invites drastic change in Florida's conservation practices but preserves existing legal concepts regarding individual property rights.[76] The act further enables the state and its agencies to play a vital role in land use management.[77] Under the act, the ultimate determination of Areas of Critical State Concern[78] and Developments of Regional Impact[79] belong to the state.

Also created by the act is the Environmental Land Management Study Committee (ELMS).[80] The committee's job is to "study all facets of land resources management and land development regulation with a view toward insuring that Florida's land use laws permit the highest quality of human amenities and environmental protection consistent with a sound and economic pattern of well planned development, and shall recommend such new legislation or amendments to existing legislation as are needed to achieve that goal."[81]

Additionally, the 1972 Florida Legislature enacted other important environmental land management laws, including: the Water Resources Act,[82] the Land Conservation Act,[83] and the Comprehensive Planning Act.[84] These

73. FLA. STAT. ch. 380 (1973).

74. FLA. STAT. §380.021 (1973).

75. "It is the legislative intent that, in order to protect the natural resources and environment of this state as provided in §7, Art. II of the state constitution, insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development and protect the health, welfare, safety and quality of life of residents of this state, it is necessary to adequately plan for and guide growth and development within this state. In order to accomplish these purposes it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development; that such state land and water management policies should, to the maximum possible extent, be implemented by local government through existing processes for the guidance of growth and development; and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States." *Id.*

76. FLA. STAT. §380.08 (1973).

77. FLA. STAT. §380.05-.06 (1973).

78. FLA. STAT. §380.05 (1973).

79. FLA. STAT. §380.06 (1973).

80. FLA. STAT. §380.09 (1973).

81. FLA. STAT. §380.09(2) (1973).

82. The Water Resources Act of 1972, FLA. STAT. ch. 373 (1973), provides for management of surface and ground waters, and related land resources, through conservation, development, and proper utilization of such resources by setting up six water management districts. See note 24 *supra.*

83. The Land Conservation Act of 1972, FLA. STAT. ch. 259 (1973), authorizes issuance of state bonds for state capital projects for environmentally endangered lands and outdoor recreation lands.

84. The State Comprehensive Planning Act of 1972, FLA. STAT. ch. 23, pt. 1 (1973), was enacted to create the division of state planning in the department of administration.

three acts will undoubtedly have an important influence on the future status of individual property rights in Florida.

The ELMS committee published its final report in December 1973.[85] The Committee had given itself the role of implementing the "quiet revolution in land use control" inaugurated by the 1972 session of the Florida Legislature.[86] The Committee, assisted by technical experts, collected information from many areas to assist its deliberations. From the very beginning, the Committee realized the magnitude of its task, aware that it was embarking upon the precedent-making endeavor reconciling two seemingly irreconcilable policies expressed in the 1968 Florida constitution,[87] the policy of conserving and protecting the state's national resources and scenic beauty[88] and the goal of protecting personal rights and private property.[89]

The two-year study that followed broke much new ground. The Committee examined both water management district boundaries and land management planning boundaries, and the relationship of one to the other.[90] It advocated a detailed inventory of all environmental resources,[91] analyzed the status of existing legislative action with regard to land use planning and proposed reform legislation under the Local Government Comprehensive Planning Act.[92] Within the framework of this Act the ELMS Committee mandated compulsory action by local government units rather than more permissive actions previously recommended.[93] A detailed analysis of the Act is beyond the scope of this study, but the reader is referred to the Act itself in order to assess its far-reaching implications.[94]

The Committee also studied the implications of large scale land developments in Florida and the attendant impact on the state's natural resources and available personal services.[95] In another critical area, it concerned

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Its duties are to prepare and revise a comprehensive state plan and to act as the coordinating agency among federal, state, and local planning units.

85. ENVIRONMENTAL LAND MANAGEMENT & STUDY COMMITTEE, ENVIRONMENTAL LAND MANAGEMENT, FINAL REPORT TO THE GOVERNOR AND THE LEGISLATURE (Dec. 1973) [hereinafter cited as ENVIRONMENTAL LAND MANAGEMENT].

86. *Id.* at 5.

87. *Id.* at 7.

88. FLA. CONST. art. II, §7 (1968).

89. FLA. CONST. art. X, §6(a) (1968) states: "[N]o private property shall be taken except for a public purpose and with compensation therefore paid to each owner."

90. ENVIRONMENTAL LAND MANAGEMENT, *supra* note 85, at 5-6.

91. *Id.* at 16.

92. *Id.* at 6, 18-60.

93. *Id.* at 19, 21, 36-37.

94. *Id.* at 55-57. These implications are suggested by §14 of the ELMS report entitled "Legal Status of Comprehensive Plan": "After a comprehensive plan for the area, or element portion thereof, is adopted by the governing body, no land development regulation or land development code or amendment thereto shall be adopted by the governing body until such regulation, code or amendment has been referred to the local land planning agency for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan or element or portion thereof." *Id.* at 55.

95. *Id.* at 67-75.

itself with coastal and inland wetlands and "made important recommendations for their preservation and public acquisition."[96]

Additionally, the Committee entered the extremely controversial field of land taxation,[97] suggesting that "in addition to raising revenue, the tax system could be used to influence land use decisions."[98] Consequently, "the property tax can be used as a land management tool, along with the police power, to direct land use."[99] The Committee's extensive research and activities in this sensitive area furnished the fuel for the extensive debate in both the 1973 and 1974 Florida legislative sessions.[100]

An indication of things to come surfaced in the 1973 Florida legislative session in debate concerning the acquisition of the Big Cypress Swamp by the state.[101] The proponents of acquisition stressed the importance of the area because of its "significant impact upon environmental and natural resources of regional and statewide importance . . . [the need] to accomplish the purposes of The Florida Environmental Land and Water Management Act of 1972 and to implement §7, Art. II of the state constitution."[102] After intense debate the measure was passed and funds were set aside to pay for the land subsequent to its acquisition through eminent domain proceedings.[103] Opponents of the Act were alarmed by the use of eminent domain as the means of acquiring the Big Cypress Swamp. They believed use of that procedure would operate as precedent for other large scale acquisitions by the state and thus endanger private landholding interests. These warnings alarmed farmers who viewed their private property rights as being in jeopardy.

The battle was joined during the 1974 Florida legislative session. The proponants of the ELMS Committee report introduced a thirty-six page bill entitled "Local Governmental Comprehensive Planning Act of 1974."[104] This bill was hailed as the forerunner of mandatory comprehensive planning and coordination among all units of government within the state, which would "shape the future of Florida for the rest of this century."[105] The bill required that, by October 1, 1977, every city and county within the state of Florida adopt a local comprehensive plan in conformity with certain required elements having to do with future land use, traffic circulation, sewage disposal,

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96. *Id.* at 76-106.

97. *Id.* at 107-10.

98. *Id.* at 109.

99. *Id.*

100. As an indication of the debates that occurred see the explanatory statements connected with passage of the FLA. H.R. Con. Res. 2800. FLA. H.R. JOUR. 241 (April 9, 1974).

101. The "Big Cypress Conservation Act of 1973" was incorporated into FLA. STAT. §380.055 (1973). The area was designated an area of critical state concern and funds were set aside under the Land Conservation Act of 1972 to acquire the Federal Big Cypress National Freshwater Reserve by way of purchase or eminent domain.

102. FLA. STAT. §380.055(2) (1973).

103. FLA. STAT. §380.055(7) (1973).

104. The "Local Government Comprehensive Planning Act of 1974" was introduced on April 2, 1974, in both the Senate (S. 298) and the House (H.R. 2884).

105. G. SHIMBERG, SUMMARIZED COMMENTARY ON THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING ACT OF 1974, at 3 (Dec. 20, 1973).

potable water, recreation, and open space and conservation.[106] It further provided that if a city failed to meet this responsibility the county in which it was located could implement a plan.[107] In the unlikely event that the county failed to function, the Division of State Planning would oversee the preparation of a plan for the county.[108] Although the bill contained adequate opportunity for individual and local input in the creation of the plan, it was attacked immediately on many fronts. The agricultural interests, joined by other powerful forces that believed in the traditional concepts of private property rights, led the attack. Following a bitter battle these conservative elements prevailed.[109] As the house organ of one orthodox group expressed it:

> The 1974 legislative session now closing has seen another classic battle between those of the conservative side fighting to maintain the rights of private property ownership, and the liberal wing which has tried to wipe out private rights in favor of Big Brother government.
> The main issue before the people of Florida today is whether the private rights of land ownership are to be maintained, or are to be allowed to disappear before the constant attacks of the liberal wing in state government.[110]

This statement is obviously an emotional over-simplification of the issue. Nevertheless, it accurately represents the feeling of the agricultural element in Florida concerning basic property rights. The laissez-faire teachings of Adam Smith[111] and the enunciations of John Locke[112] still furnish the basic philosophy guiding the political, economic, and social actions of the rurally oriented population of Florida.

As a result of a concerted conservative effort in the Florida Senate, the 1974 ELMS Committee's Comprehensive Planning Act aborted. In its place the legislature adopted an innocuous concurrent resolution[113] on a policy for growth for the State of Florida stressing in platitudinous form the need for maintaining the quality of life in Florida,[114] for preserving the natural heritage[115] and encouraging farmers to keep desirable agricultural land out

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106. Proposed Local Government Comprehensive Planning Act of 1974, §§8(6)(a)-(i). See note 105 *supra.*

107. *Id.* §4(4).

108. *Id.* §4(5).

109. The resolution that was passed (FLA. H.R. Con. Res. 2800) in lieu of the "Local Government Comprehensive Planning Act of 1974" is an ineffectual piece of legislation, stripped of the force and innovative thinking that had marked the proposed Act. See text accompanying notes 115-118 *infra.*

110. THE GRAZER, June 15, 1974, at 4.

111. A. SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, (W. Playfair ed. 1811).

112. See note 2 *supra.*

113. FLA. H.R. Con. Res. 2800 (1974); see note 100 *supra.*

114. *Id.* at 2.

115. *Id.* at 6.

of commercial development.[116] The generalities contained therein attempted to satisfy all and offend none.

The struggle with regard to land use planning is not, however, presently restricted to Florida. An identical drama with different actors has been concurrently unfolding on the national scene. In the United States House of Representatives, Representative Morris K. Udall of Arizona introduced H.R. 10,294, which would have authorized annual grants to the states for the development of land use plans that met the standards laid down by federal guidelines.[117] Extensive hearings were held on the bill by the Subcommittee on the Environment.[118] The published report of these hearings reiterated the seemingly irreconcilable conflict between those who strongly believe in the traditional concept of vested individual property holdings and those who stress the social function of property.[119] Interestingly, the opponents of the bill were led by Representative Sam Steiger of Arizona.[120] Although the bill was defeated narrowly on a procedural point,[121] the basic issue was federal land use planning. Once again the proponents of private ownership prevailed. Their viewpoint was expressed by Representative Joel T. Broyhill of Virginia who stated that H.R. 10,294 would, among other things, "destroy traditional local control over land use . . . and would remove and eliminate one of the last remaining ways for an individual to have a voice in determining his future."[122]

Before leaving the Florida land use control area it is appropriate to note a growing phenomenon—the trend to attempt to limit population growth by controlling the influx of people into certain geographical areas.[123] These

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116. *Id.*

117. H. Res. 10,294 was introduced to the U.S. House of Representatives on Sept. 13, 1973, and distributed for study while committee hearings on the bill were taking place. 119 CONG. REC. H7919 (daily ed. Sept. 13, 1973). For a summary of the bill, see CONG. RESEARCH SERV. DIGEST OF PUBLIC GENERAL BILLS AND RESOLUTIONS, 93d Cong., pt. II, E-1037 (1973).

118. *Hearings on H.R. 10,294 Before the Subcomm. on the Environment of the House Comm. on Interior and Insular Affairs,* 93d Cong., 2d Sess., ser. 93-50 (1974).

119. *Id.*

120. *Id.* at 8.

121. The bill was defeated June 11, 1974, by a vote of 204 yeas and 211 nays. 120 CONG. REC. H5019 (daily ed. June 11, 1974).

122. *Id.* at H5021.

123. *See generally* Juergensmeyer & Gragg, *Limiting Population Growth in Florida and the Nation: The Constitutional Issues,* 26 U. FLA. L. REV. 758 (1974). The City Council of Boca Raton, Florida, adopted Resolution No. 109-72 on Nov. 8, 1972, which placed a 40,000 ceiling on the number of dwelling units allowed within the city limits. Ordinance No. 1795 was adopted on March 13, 1973, to modify the 40,000 ceiling by allowing a 6,000-unit increase if such units are included in a planned unit development. The validity of these provisions is being challenged at this writing. In California, the City of Petaluma adopted in 1971 the "Petaluma Plan," which sought to control the town's growth rate through limitation on the number of new housing units and the setting of a maximum population level of 55,000 by 1985. The United States District Court of the Northern District of California found the Petaluma Plan unconstitutional as an infringement upon the guaranteed freedom of travel. Compelling state interests (that is maintenance of adequate sewer and water lines), which may have necessitated population controls, were

attempts have given rise to much litigation in the constitutional area with regard to municipal power and home rule,[124] exercise of the police power,[125] and the corresponding rights of individual citizens (under the fifth and fourteenth amendments of the United States Constitution) to react against arbitrariness, confiscation, and discrimination.[126]

The Florida supreme court in dealing with the general welfare provision of the police power has recognized that this concept is in a constant state of flux[127] regarding where public purpose begins and where it ends. In other states, landmark decisions are appearing that will affect this question in Florida.[128] A plan involving phased growth in an area, after adequate study of future needs was approximated, was upheld by the New York Court of Appeals in *Golden v. Planning Board.*[129] Notably, the court took great pains to distinguish between an attempt to freeze population at a present level and a planning effort to insure growth through efficient land use.[130]

In most cases involving the exercise of the police power the issue of "taking" of private property arose. How far can a public body restrict the use of private property without constituting a "taking," which should in some fashion be compensable to the land owner?[131] This point has become increasingly important to the farmer and other owners of large tracts of land. If such persons are to be restricted in their development of land, what type of compensation, if any, should they receive? Justice Holmes wrestled with this problem in *Pennsylvania Coal v. Mahon,*[132] saying, "if regulation goes

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not, in the court's view, sufficiently established. Construction Indus. Ass'n v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974).

124. In a case of original jurisdiction in Florida, Javis Dev. Corp. v. City of Sunrise, No. 73-6546, (Cir. Ct. Broward County Oct. 9, 1973), Judge Fronza found the county ordinance imposing a "land use fee" upon anyone desiring to enter into a new construction of buildings or add onto existing ones an unconstitutional use of power. "If government were allowed to tax in this instance without a direct authority from the Constitution or the legislature, it would be a precedent to tax any group or industry that contributed to any total problem. . . . Laws that command one group of people to pay for a benefit inuring to all the people must be rejected. Every incidence that encroached on one individual liberty or right must be struck down. If not, the pyramid of oppressive steps would finally reach that last step and irrevocably damage those organic ideals that our forefathers thought best for the future of our people expressed so eloquently in our historic, once-upon-a-mankind Constitution." *Id. See* Broward County v. Javis Dev. Corp., No. 73-1239 (Cir. Ct. Broward County, Fla. Oct. 5, 1973) (Joint Appellants' Brief, Appeal from final Declaratory Judgment).

125. McInerney v. Ervin, 46 So. 2d 458, 463 (Fla. 1950).

126. *See* F. BOSSELMAN, D. COLLIES & J. BANTA, THE TAKING ISSUE (1973); *Landowners' Rights versus Land Use Regulation* (presented in connection with the Second Annual Young Lawyers Convention; F. Bosselman, G. Finell, G. Lefore, panelists, 1974).

127. 46 So. 2d 458, at 463.

128. Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972); National Land & Inv. Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1965); *see* Bosselman, *Can the Town of Ramapo Pass a Law To Bind the Rights of the Whole World?*, 1 FLA. ST. U.L. REV. 234 (1973).

129. 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972).

130. *Id.* at 379, 285 N.E.2d at 302, 334 N.Y.S.2d at 152.

131. See note 127 *supra.*

132. 260 U.S. 393 (1922).

too far it will be recognized as a taking."[133] This landmark case has set the parameters for all subsequent cases in that field. In spite of the *Mahon* stand, however, many new cases imply that preserving the environment is more important than private owners' rights to the use of their land.[134]

An easy solution to this problem is not yet on the horizon. However, one possible approach is the Transfer Development Rights.[135] This scheme, advertised as a substitute for zoning, "allows for limits on the use of land in accordance with a plan, while providing equal compensation to all landowners for their share in future development potential as provided by the plan."[136] In other words, land values and development values are separated, and to a large extent this plan eliminates both windfall and total wipe-out transactions that occur so often in the wake of present land use regulation.

The concept is so new that there is little public understanding or acceptance of its basis.[137] Since it advocates an unorthodox legal approach to property rights by separating present use from potential development of the same land, the agricultural segment of the population has shown little enthusiasm for it.

Legal Concepts and the Farm Labor Problem

It is not the intent of the authors to fully analyze the farm labor problem in Florida, for it is clearly beyond the scope of this article. Nevertheless, it is important to recognize that the agriculturist must face new labor problems that far transcend those he experienced on his farm.

It is still true that the farmer is a jack-of-all-trades, but he is not a master of all of them. In his relationships with labor the farmer is still motivated by his individual goals. He has been a champion of right-to-work legislation,[138] and he has looked with disfavor upon collective bargaining and its legal entanglements.[139] He has respect for individual laborers but resents dealing with intermediaries who engage in collective bargaining sessions on the workers' behalf. He cannot understand the secondary boycott.[140] While he sometimes has need for migrant laborers, he refuses to deal with demands

133. *Id.* at 415.

134. Candlestick Properties, Inc. v. San Francisco Bay Conservation & Dev. Comm'n, 11 Cal. App. 3d 557, 89 Cal. Rptr. 897 (Dist. Ct. App. 1970); *In re* Spring Valley Dev., 300 A.2d 736 (Me. 1973); Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972).

135. *See* National Conference on Managed Growth, Major Addresses, Panel Discussions, and Workshop Reports, *Transfer Development Rights: The Public Interest in Private Space* 9-11, Americana Hotel, N.Y., N.Y. (Feb. 18-20, 1974).

136. *Id.* at 9; from a paper by Aubrey Moore, Fairfax County Bd. of Supervisors.

137. *Id.* at 10; from a paper by John Castonis, College of Law, U. of Illinois.

138. Right to Work legislation was introduced in the 1974 Legislative session on April 8, 1974, in the Senate (S.527) and on April 6, 1974, in the House of Representatives (H.R. 3436).

139. See note 144 *infra.*

140. The secondary boycott is a coercive arrangement used to force the farmer to hire a designated group of employees. Basically, the threat is that if certain employees are not hired, or hired at specified wages, union pressure will be used to prevent purchase of the farmers' crops.

made by their leaders. He is bewildered by legislative action in the labor relation field because he believes it is unwarranted and is a basic encroachment upon his private rights as a producing member of society.[141] Workmen's Compensation, like the "hiring hall," is another new burden he must endure.[142] The realities of how to cope with those obstacles are hard for him to accept. The new labor legislation adopted by the 1974 Florida Legislature[143] may mark the beginning of a new day. That law attempted to bring together the advocates of right to work and those who favor collective bargaining.[144] How the law will work and what it will bring forth are at this time matters of pure conjecture. It has, however, forced the farmer to face the realities of a situation over which he is no longer in complete control.

In another related development, the farmer again found himself in a different arena. The Occupational Safety and Health Act of 1970,[145] passed by the United States Congress, encompasses working conditions on the farm. The avowed purpose of the Act was to assure every working man in the nation a safe and healthful occupational environment.[146] Under the Act it is the duty of each employer to furnish his employee with work areas free from recognized hazards likely to cause death or serious physical harm.[147] In order to do this the employer must comply with safety and health standards promulgated by law.[148]

From the very outset the farmer resented this intrusion into his mode of operation.[149] He bitterly opposed the regulative and administrative features of the Act. Because the Act regulated everything from the application of

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141. See note 31 *supra.*

142. Under FLA. STAT. §440.02(1)(b)(2) (1973), small farmers are not required to provide coverage for employees when the farmer employs 9 or fewer regular employees and fewer than 20 other employees at a time for seasonal agricultural labor. However, the Bureau of Workmen's Compensation has ruled that employees of small farmers must be covered when doing work off farm property.

143. Fla. Laws 1974, ch. 74-100.

144. The Act provided, *inter alia,* that it is the public policy of the state to implement art. I, §6 of the Florida constitution and to promote harmonious and cooperative relationships between government and its employees by neither encouraging nor discouraging organization of those public employees, FLA. STAT. §447.001 (1973); that FLA. STAT. §447.03 (1973) be amended to guarantee all employees the right to form, join, or assist labor unions or organizations or to *refrain* from such activity; and that FLA. STAT. §447.17 (1973) be created to provide employees denied employment because of their membership or nonmembership in labor unions or organizations the ability to collect damages caused by denial of employment against the employee.

145. 29 U.S.C. §§651 *et seq.* (1970). For an overview of OSHA see B. WALLS, OCCUPATIONAL SAFETY AND HEALTH ACT (Practising Law Institute No. A4-1086, 1972).

146. 29 U.S.C. §651(b) (1970).

147. 29 U.S.C. §654(a)(1) (1970).

148. 29 U.S.C. §654(a)(2) (1970).

149. As a speaker for the farmer, one journal reports: "[S]trong support exists for major changes in the law that established the Occupational Safety and Health Administration. Farm Bureau favors outright repeal." 53 FARM BUREAU NEWS 103 (1974).

pesticides[150] to structural standards for farm tractors,[151] he thought that the very essence of his privacy as an individual had been invaded. Presently the OSHA standards are being formulated for only four areas of agriculture.[152] They are: logging and pulpwooding,[153] production of anhydrous ammonia (a farm fertilizer),[154] roll-over structure requirements for tractors,[155] and control of pesticides.[156] Much of the opposition by farmers arose from what they considered unwarranted intrusion upon traditional work practices. Publishing an administrative order in the *Federal Register*[157] and then demanding compliance did not soften farmers' opposition to the federal government's proposals.

CONCLUSION

Where is agriculture today with reference to changing legal concepts in our urbanized society? The answer is not an easy one, but certain facts are very apparent. The farmer has adapted himself to an agricultural revolution that has made him a most efficient producer of food and fiber. He has mastered the machine and overcome many natural obstacles. On the other hand, he has remained staunch in his adherence to the sanctity of private property and his belief in *laissez-faire*. Individualism is still the focal point of his existence. How easily the farmer will be able to adapt himself to the new world of changing legal concepts based on the philosophy of social action is an open question. Urbanized society cannot exist without the farmer, for he furnishes the food and fiber necessary for its very existence. Possibly the answer will come with each side yielding to the other's viewpoint until an acceptable middle ground develops.

150. The use of pesticides and subsequent entry onto treated fields by farm workers are regulated in 29 C.F.R. §1910.267a (1974). The standards adopted by the Environmental Protection Agency on May 8, 1974, also regulate the use of pesticides on fields in which farm workers may be entering. 40 C.F.R. §170 (1974).

151. Proposed roll-over structure regulations for farm tractors are found in 39 Fed. Reg. 4536 (1974).

152. 29 C.F.R. §1910.267 (1973).

153. 29 C.F.R. §1910.266 (1973).

154. 29 C.F.R. §1910.111 (1973).

155. See note 152 *supra*.

156. See note 151 *supra*.

157. The publication procedure is required under 29 U.S.C. §655(b)(2) (Supp. 1974).