ANTI-CORPORATE, AGRICULTURAL COOPERATIVE LAWS AND THE FAMILY FARM

Matthew M. Harbur[*]

I. INTRODUCTION

One summer during college, I apprenticed myself to a family farmer. I was impressed with the work that his adolescent sons put in without complaint or dismay, and stunned at how the whole family stopped at noon to eat lunch—a rare occurrence

* Matthew Harbur received his B.A. in Philosophy from Grinnell in 1994 and his M.A. in Soil Science from Iowa State University in 1998. He is currently finishing a Doctoral Degree from Iowa State University in Crop Science with an emphasis on alternative approaches to weed management.

in this age where both parents work in most families. I recognized the benefits of the family farm. This one farm was far from perfect, but with its close knit family structure, hard work, and sense of satisfaction, this farm could do a lot to combat the trends quoted to us on the six o'clock news.

The family farm holds an important place in the history of the United States.[1] At the time of the American Revolution, ninety-five percent of the population was rural and engaged in agriculture.[2] At that point in time, America provided more opportunity to farm than any other part of the world.[3] For Thomas Jefferson and other American democrats, those engaged in farming formed the ideal personalities for democracy to succeed.[4]

II. THE FAMILY FARM

Two factors contributed to the decline of farmers: (1) increases in productivity and marketing of products; and (2) modernization.[5] The increased number of farms, combined with the increasing sale of their products to others (as opposed to self-sufficiency), subjected farmers to lower prices.[6] The proponents of modernization, who founded the USDA and passed the Morrill and Hatch Acts, looked upon the poverty faced by American farmers and decided, rather than helping farmers to increase incomes, to develop technology that would displace them from the farm and move them into the city.[7]

Myths about the family farm are hotly disputed today.[8] It is argued that they are no more efficient than corporate farms when one considers the management costs of the farmer (although they are also no less efficient, as others may argue).[9] Corporate farms claim that they take equal care of the land in response to government incentives such as the Conservation Reserve Program while small farmers disagree.[10]

The strongest argument for the smaller, family farms, however, is empirical and undisputed.[11] The Arvin and Dinuba study, conducted more than fifty years ago

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1. *See* Richard S. Kirkendall, *A History of the Family Farm*, *in* IS THERE A MORAL OBLIGATION TO SAVE THE FAMILY FARM? 79, 79 (Gary Comstock ed., 1987).
2. *See id*. at 80.
3. *See id*.
4. *See id.* at 80-81.
5. *See id*. at 84-85.
6. *See id.* at 79.
7. *See id.* at 85-86.
8. *See generally* Keith D. Haroldson, *Two Issues in Corporate Agriculture: Anti-corporate Farming Statutes and Production Contracts*, 41 DRAKE L. REV. 393 (1992) (providing voluminous information on the agrarian myth, anti-corporate farm laws, and farm contract laws in this essay).
9. *See id.* at 397. Haroldson's article inspired much of the thought in this section and is highly recommended by this author.
10. *See id.* at 398.
11. *See* MARTY STRANGE, FAMILY FARMING: A NEW ECONOMIC VISION 84-85 (1988).

by Walter Goldschmidt, compared two California towns: one surrounded by small, owner-operated farms, the other surrounded by larger, industrial farms.[12] The small-farm town supported twice as many local businesses, spent more on schools, had more parks and playgrounds, and twice the number of civic organizations and churches as the industrial-farm town.[13] A U.S. Congressional study in 1986 found that as farm size increased, so did poverty, and that the faster the size increase, the faster the corresponding rise in poverty.[14]

How can laws preserve the family farm? Certainly, there are a great number of laws, especially tax and estate laws, which allow special exceptions for farmers. In fact, Steven C. Bahls tells his students that his course in agricultural law is all "about exceptions."[15] The purpose of this paper is to review just two of those laws: (1) anti-corporate farming laws and (2) laws allowing farmers to act in cooperatives.

III. ANTI-CORPORATE LAWS

A. *History*

Currently, nine states have laws prohibiting corporate farms: Kansas, North Dakota, South Dakota, Minnesota, Iowa, Missouri, Wisconsin, Oklahoma, and Nebraska.[16] The last two states include this ban in their constitutions.[17] In six of the nine states, "family farm corporations" are exempted from this ban.[18] The family farm corporation status typically requires that family members, related in at least the fourth degree of kinship, own more than fifty percent of the voting stock.[19] One corporation cannot be owned in any part by another corporation — only natural persons can be stockholders.[20] All of these states except Wisconsin, Oklahoma, and

12. *See id.* at 85-87 (arguing that that debt financing, land grant university research, and the myth that "bigger is better" contributes to the expansion of farms).

13. *See id.* at 86-87 (citing WALTER GOLDSCHMIDT, AS YOU SOW: THREE STUDIES IN THE SOCIAL CONSEQUENCES OF ARGRIBUSINESS (1978)).

14. *See id.* at 87 (citing OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, OTA-F-285, TECHNOLOGY, PUBLIC POLICY, AND THE CHANGING STRUCTURE OF AGRICULTURE: VOLUME 2—BACKGROUND PAPERS, PART D: RURAL COMMUNITIES (1986).

15. Steven C. Bahls, *Preservation of Family Farms—The Way Ahead*, 45 DRAKE L. REV. 311, 319 n.80 (1997).

16. *See* Haroldson, *supra* note 8, at 400; NEB. CONST. art. XII, § 8(1); OKLA. CONST. art. XXII, § 2; IOWA CODE § 9H.4 (1999); KAN. STAT. ANN. § 17-5904 (1995 & Supp. 1998); MINN. STAT. ANN. § 500.24(3) (West 1990 & Supp. 1999); MO. ANN. STAT. § 350.015 (West 1991 & Supp. 1999); N.D. CENT. CODE § 10-06.1-02 (1995 & Supp. 1999); S.D. CODIFIED LAWS § 47-9A-3 (Michie 1991); WIS. STAT. ANN. § 182.001 (West 1992).

17. *See* Haroldson, *supra* note 8, at 402; NEB. CONST. art. XII, § 8(1); OKLA. CONST. art. XXII, § 2.

18. *See* NEB. CONST. art. XII, § 8(1)(A); IOWA CODE § 9H.4; KAN. STAT. ANN. § 17-5904; MINN. STAT. ANN. § 500.24(3)(b); MO. ANN. STAT. § 350.015(2); S.D. CODIFIED LAWS § 47-9A-13.

19. NEB. CONST. art. XII, § 8(1) (Nebraska allows relatives within the fourth degree of kinship).

20. *See, e.g.*, MO. ANN. STAT. § 350.010(2).

Iowa, require at least one family member to reside on the farm.[21] Finally, an Iowa family farm corporation must derive at least sixty percent of its revenues from farming.[22]

Exact requirements allowing corporate farm ownership can vary depending on state statute. In North Dakota, a corporation is allowed to own farmland if all members are related, officers and directors are shareholders themselves, and at least one person resides on the farm.[23] In addition, the number of members within the corporation is limited to fifteen, and at least sixty-five percent of the average gross annual income over a five year period must be from farming.[24] In Oklahoma, a corporation cannot own farmland unless the corporation's stockholders are limited to ten non-related shareholders (related shareholders in excess of ten are allowed) and at least sixty-five percent of the average gross annual income over a five year period is from farming.[25]

Six states also allow authorized farm corporations to own farmland.[26] Five of these states limit the number of shareholders in these corporations: Iowa (25), Kansas (15), Minnesota (5), South Dakota (10) and Wisconsin (15).[27] Missouri does not limit the number of stockholders, but requires that at least two thirds of the corporation's income come from farming.[28] Similarly, Minnesota requires that at least fifty-one percent of the shareholders either reside on the farm or are actively engaged in farming.[29] All six states require that the stockholders be natural citizens, not corporations.[30]

Not only is a farm corporation prohibited from acquiring and holding agricultural land, it is also denied control of an important input in the production of

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21. *See* NEB. CONST. art. XII, § 8, cl. 1; KAN. STAT. ANN. § 17-5903(j)(3); MINN. STAT. ANN. § 500.24(2)(d); MO. ANN. STAT. § 350.010(4); N.D. CENT. CODE § 10-06.1-12(b); S.D. CODIFIED LAWS § 47-9A-2(2). *See also* IOWA CODE § 172c.1(9) (1987); OKLA. STAT. ANN. tit. 18, § 951 (West 1998); WIS. STAT. ANN. § 182.001 (West 1992). Since 1992, Wisconsin, Oklahoma, and Iowa have eliminated the "residing in" requirement.

22. *See* IOWA CODE § 9H.1(8)(c).

23. *See* N.D. CENT. CODE § 10-06.1-12.

24. *See id*.

25. *See* OKLA. STAT. ANN. tit. 18, § 951.

26. *See* IOWA CODE § 9H.2; KAN. STAT. ANN. § 17-5903(k); MINN. STAT. ANN. § 500.24(2)(d); MO. ANN. STAT. § 350.010(2); S.D. CODIFIED LAWS § 47-9A-15; WIS. STAT. ANN. § 182.001(1).

27. *See* IOWA CODE § 9H.1(3)(9); KAN. STAT. ANN. § 17-5903(k); MINN. STAT. ANN. § 500.24; S.D. CODIFIED LAWS § 47-9A-15; WIS. STAT. ANN. § 182.001.

28. *See* MO. ANN. STAT. § 350.010(2)(b).

29. *See* MINN. STAT. ANN. § 500.24(2)(d)(5). Kansas previously required that "at least thirty percent of the stockholders reside on the farm or be actively involved in farming." KAN. STAT. ANN. § 17-5903(k)(3)(1995), *amended by* KAN. STAT. ANN. § 17-5903(k)(3) (Supp. 1998).

30. *See* IOWA CODE § 9H.1(3)(b); KAN. STAT. ANN. § 17-5903(k)(1); MINN. STAT. ANN. § 500.24 (2)(d)(1); MO. ANN. STAT. § 350.010(2)(a); S.D. CODIFIED LAWS § 47-9A-15; WIS. STAT. ANN. § 182.001(1)(c).

agricultural commodities.[31] The statutory language of seven of the states—Minnesota, Missouri, Nebraska, Oklahoma, North Dakota, South Dakota, and Wisconsin, also provide further discouragement to corporate involvement in agriculture by prohibiting corporations from engaging in farming.[32] Iowa prohibits processor ownership, control, or operation of a feedlot in Iowa where "hogs or cattle are fed for slaughter."[33] Kansas prohibits processors from owning hogs.[34] or from contracting for the production of hogs.[35]

B. *Judicial Interpretation*

1. *Introduction*

Corporate farms have attempted to attack these state statutes on the basis that they deny equal protection of the law to farm corporations in violation of the Fourteenth Amendment to the United States Constitution.[36] "Federal courts, however, usually do not strike down social or economic measures enacted by states, except when 'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the legislature's activities were irrational.'"[37]

2. Asbury Hospital v. Cass County

The Initiative Measure of 1932 required that land acquired by a corporation in North Dakota be sold within ten years, or else escheat to the state, which would then auction the land and return the proceeds to the corporate owner.[38] In *Asbury Hospital v. Cass County*, the plaintiff acquired a farmstead in North Dakota through a mortgage foreclosure prior to the enactment of this initiative.[39] Following the enactment, the plaintiff repeatedly tried to sell the land but had not been offered a satisfactory price.[40]

The hospital argued that its allowance to possess the property in North Dakota, prior to the statutory enactment, amounted to a contract with the state granting such possession, and that subsequent ban on corporate ownership therefore

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31. *See* IOWA CODE § 9H.4.

32. *See* NEB. CONST. art. XII, § 8(1); OKLA. CONST. art. XXII, § 2; IOWA CODE § 9H.4; KAN. STAT. ANN. § 17-5904; MINN. STAT. ANN. § 500.24 (3); MO. ANN. STAT. § 350.015; N.D. CENT. CODE § 10-06.1-02; S.D. CODIFIED LAWS § 47-9A-3; WIS. STAT. ANN. § 182.001.

33. IOWA CODE § 9H.2.

34. *See* KAN. STAT. ANN. § 17-5904.

35. *See id.*

36. *See* Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 462 (1988).

37. Bahls, *supra* note 15, at 313 (quoting Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 463 (1988) (citations omitted)).

38. *See* Asbury Hosp. v. Cass County, 326 U.S. 207, 207 (1945).

39. *See id.* at 209-10.

40. *See id.* at 210.

violated the contract clause of Article I, Section 10 of the Constitution.[41] The Supreme Court responded that the state of North Dakota had not given a charter to the corporation when it first entered the state, and therefore was not obligated under any contract.[42]

The plaintiff corporation also attempted to seek protection under the due process clause of the Fourteenth Amendment.[43] The court held that the state did not violate due process in requiring corporations to dispose of farmland they possess in North Dakota, nor in requiring disposal (even if the corporation does not recoup its original investment in the land).[44]

The hospital further claimed that the language allowing corporations which deal primarily in farmlands and farmer cooperatives to possess farmlands, should also allow the hospital to possess its land under the equal protection clause of the Fourteenth Amendment.[45] The Supreme Court was not swayed by the argument and replied that statutory discrimination between classes is permissible as long as it is relevant to the purpose of the legislation.[46]

3. MSM Farms, Inc. v. Spire

MSM Farms, Inc. v. Spire is very similar to *Asbury Hospital v. Cass County*.[47] MSM Farms, a Nebraska corporation with unrelated stockholders, challenged article XII, section 8, of the Nebraska Constitution, which prohibited non-family corporations from owning farmland and required that such corporations divest themselves of that land within two years of a court order.[48]

MSM Farms argued that the two year rule violated the due process clause of the Fourteenth Amendment.[49] The State Court of Appeals unsympathetically noted that MSM Farms had acquired its land *after* the constitutional amendment and therefore was not deprived of due process.[50]

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41. *See id.*
42. *See id.* at 211.
43. *See id*. at 210.
44. *See id.* at 212. The Supreme Court went on stating:
> It is enough that the corporation, in complying with the lawful command of the State to part with ownership, is afforded a fair opportunity to realize the value of the land, and that the sale, when required, is to be under conditions reasonably calculated to realize its value at the time of sale.

Id. at 212-13.
45. U.S. CONST. amend. XIV, § 1.
46. *See Asbury Hosp. v. Cass County*, 326 U.S. 207, 215 (1945).
47. *Compare* MSM Farms, Inc. v. Spire, 927 F.2d 330 (8th Cir. 1991) (rejecting a corporation's challenge against state constitution provision prohibiting non-family corporations from owning farmland) *with Asbury Hosp.*, 326 U.S. at 207.
48. *See MSM Farms, Inc.*, 927 F.2d at 334 (emphasis added).
49. *See id.*
50. *See id.* at 335.

MSM Farms also argued that it was denied "equal protection because the law's prohibition of non-family corporate farming is not rationally related to achieving any legitimate state purpose."[51] The Supreme Court disagreed again, noting that the constitutional amendment "promote[d] family farm operations in Nebraska and sought to prevent a perceived threat that would stem from unrestricted corporate ownership of Nebraska farm land by preventing the concentration of farmland in the hands of non-family corporations."[52] Therefore, the amendment achieved a legitimate state purpose.[53]

C. *Arguments*

Many arguments can be made against anti-corporate farming laws. The weakest, in my opinion, is the argument that these laws reduce demand for farmland, and subsequently lower land values. A review of the land boom crisis of the late 1970s and early 1980s shows that the increased land price during that period, coupled with the eagerness to borrow in order to expand, contributed largely to the insolvency of family farms.[54] Despite anti-corporate laws, land values in Iowa increased immediately following the passage of these laws, and have continued to steadily increase in most years since the land crash of the middles 1980s.[55]

In terms of passing farm estates between generations, increased land values only further challenge heirs from gathering enough liquidity to settle federal and state inheritance taxes.[56] Higher land prices also increase the difficulty of beginning farmers. If the purpose of policy is to provide land as farming capital, as opposed to mere investment capital, then lower land prices should not be a grave concern.

Another learned scholar writes:

> What the Midwestern states' corporate farming statutes merely imply, the related battery of statutes banning alien ownership of farmland blatantly articulates: No newcomers, domestic or foreign, need apply. New capital,

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51. *Id.* at 332.
52. *Id.* at 333.
53. *See id.* at 332.
> Social and economic measures, like the corporate farming prohibition in this case, run afoul of the equal protection clause only when 'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.'

Id. (quoting Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 452 (1988)).

54. *See* David Ray Papke, *Rhetoric and Retrenchment: Agrarian Ideology and American Bankruptcy Law*, 54 MO. L. REV. 871, 889-90 (1989).

55. Iowa State University Extension, *ISU Extension Land Value Survey Slide 23* (visited Aug. 27, 1999) <http://www.exnet.iastate.edu/Pages/communications/96LandVal/Slideshow23.html> (showing the history of Iowa land prices from 1976 to 1996).

56. *See* I.R.C. § 2001 (1999).

> new farmers, new ideas — nothing alien to the farming tradition as incumbent landowners know it need apply for entry into American agricultural markets.[57]

In fact, it would seem that anti-corporate laws would increase the opportunities for newcomers. Land which is not tied up by huge conglomerates could be available for new farmers to plow their fresh ideas into the countryside.[58]

Neil E. Harl, a well known Iowa State University Professor, argues that if the purpose of these laws is to limit the dissolution of small farms and their absorption by large, industrial farms, then current laws are ineffective.[59] Ineffective in that they do not limit farm sizes — family farm and authorized corporations can grow unchecked.[60] The social benefits of family farms come from the many small farms, rather than one large family-run farm.[61] If absentee land ownership, lack of opportunity for beginning farmers and the healthy economies of rural communities are at issue, then legislation has to take steps to limit farm sizes and the number of farms that an individual, partnership or corporation can control.[62]

Murphy Family Farms, a hog producer contracting with farmers in both Iowa and Missouri, boasts nightly on television about the 200 or more farms it works with.[63] Ironically, Murphy qualifies as a "family farm corporation" under Missouri law — a far cry from that envisioned by those who support these laws.[64] Most states with anti-corporate laws require only that a "family farm corporation" have a majority of family members as *voting* shareholders — and says nothing at all about non-voting shareholders.[65] Only one family member needs to be directly involved with the farm, and that may be satisfied merely by "residing on" the farm.[66] Finally, family ownership reveals nothing about the overall stock distribution, or the extent to

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57. Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809, 827 (1995).

58. *See id.*

59. *See* Neil E. Harl, Lecture for Agricultural Law at Iowa State University (Apr. 20, 1998) (on file with the author). Harl is Charles E. Curtis Distinguished Professor of Economics at Iowa State University, Ames, IA, and is the principal reviewer of this paper.

60. *See id.*

61. *See id.*

62. *See id.*

63. *See id.*

64. *See* Mike Hendricks, *Firm to Proceed with Missouri Hog Farm Continental Grain Project is Opposed by Alliance, Residents*, KAN. CITY STAR, Oct. 1, 1993, at B1 *noted in* Jan Stout, Note, *The Missouri Anti-Corporate Farming Acts: Reconciling the Interests of the Independent Farmer and the Corporate Farm*, 64 UMKC L. REV. 835, 840 (1996).

65. *See* NEB. CONST. art. XII, § 8(A); IOWA CODE § 172C.1(8)(a) (1987); KAN. STAT. ANN. § 17-5903(j)(1) (1995 & Supp. 1998); MINN. STAT. ANN. § 500.24(2)(c) (West 1990 & Supp. 1999); MO. ANN. STAT. § 350.010(5) (West 1991 & Supp. 1999); S.D. CODIFIED LAWS § 47-9A-14 (Michie 1991).

66. *See* NEB. CONST. art. XII, § 8(A); KAN. STAT. ANN. § 17-5903(j)(3); MINN. STAT. ANN. § 500.24(2)(c); MO. ANN. STAT. § 350.010(5); S.D. CODIFIED LAWS ANN. § 47-9A-14.

which those who work on the farm actually own it, for example, there is no limit to the number of farmhands.[67]

There are many advantages to corporate organization that family farms should be able to enjoy.[68] Some of these advantages are that:

> 1) Retiring farmers can give away property to heirs without giving up complete control, since they are still voting shareholders.
> 2) There is no need for partition and sale if one member quits or dies, as is needed with partnerships.
> 3) It is easier to transfer stock to minors.
> 4) Estate settlement is simplified, since estate contains stock instead of real property, and since stock can pass between states as personal property.
> 5) A farmer moving into retirement can be assured of income, and can be more involved with the operations without losing Social Security benefits than otherwise.[69]

There is nothing inherently evil about corporations.[70] States should consider regulating undesirable aspects of corporations, rather than abolishing those corporations altogether.[71]

"If states are concerned about the perceived 'bad habits' of corporations, states would be better served by identifying and regulating those bad habits."[72] Minnesota has taken a step in the right direction by limiting authorized farm corporations to 1500 acres of land.[73] Iowa seems to be following this lead by imposing acreage limits on newly allowed corporate entities.[74]

One can argue that limiting farm size may limit the income of farmers. The unfortunate reality is that limiting farm size would only limit the income of farmers who continue to use existing practices.[75] The existing practices as they stand now are input intensive. Farm expansion has been motivated in part by expensive technologies which must be used over many acres in order to produce enough profit.[76] It is up to agricultural researchers to develop and introduce new farming practices which allow the farmer to employ more labor (which he or she otherwise

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67. *See* NEB. CONST. art. XII, § 8(A); KAN. STAT. ANN. § 17-5903(j); MINN. STAT. ANN. § 500.24(2)(c); MO. ANN. STAT. § 350.010(5).
68. *See* Harl, *supra* note 59.
69. *Id.*
70. *See id.*
71. *See, e.g.*, Bahls, *supra* note 15, at 314 (comparing the regulation of corporate farms).
72. *Id.*
73. *See* MINN. STAT. ANN. § 500.24(2)(d) (West 1990 & Supp. 1999).
74. Act of Apr. 16, 1998, ch. 1110, §§ 101-110, 1998 Iowa Legis. Serv. 231 (West) (to be codified at IOWA CODE Chs. 10, 10B (1999)). For further discussion see Neil E. Harl, Networking Entities (Apr. 17, 1998) (unpublished, on file with the author).
75. *See* Bahls, *supra* note 15, at 325.
76. *See id.*

has to take to town to employ in part-time jobs) and more management skills.[77] In some cases, this requires the re-introduction of old, but time-tested farming practices, such as crop rotations, the inclusion of livestock (the original "farming system") and so forth.[78]

One final problem with anti-corporate farm laws is that they can drive corporations to settle elsewhere.[79] Corporations which are not welcome in Iowa easily settle in states like North Carolina.[80] Even a federal ban on corporate farms would not prevent them from doing business in Mexico and other impoverished countries.[81] However, it would seem that independent farmers working in associations could achieve the same level of productivity as corporations, and supply the same level of prosperity to their communities.[82] Certainly, the latter business structure would provide greater social benefit to the community.[83] As with any complex social and economical arrangement, appropriate planning is necessary to achieve these goals.[84]

IV. AGRICULTURAL COOPERATIVE LAWS

A. *History*

At the end of the last century, the effect of agricultural oligopolies was already felt.[85] Farmers joined together in agricultural marketing cooperatives to better control supply and raise the bids for their products.[86] Some cooperatives process and market farm products.[87] Others allow farmers to collectively bargain with processors, but leave the farmers to deliver the product.[88] Anti-trust law is relevant in both cases, because a cooperative is a combination of farmers and that are engaged in trade or commerce.[89]

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77. *But see id.* at 324-27.
78. *But see id.*
79. *But see id.*
80. *But see id.*
81. *See generally* Jan Stout, Note, *The Missouri Anti-Corporate Farming Act: Reconciling the Interests of the Independent Farmer and the Corporate Farm*, 64 UMKC L. REV. 835 (1997) (comparing independent farming and corporate farming in the context of the Missouri Anti-Corporate Farming Act).
82. *See id.*
83. *See generally* STRANGE, *supra* note 11 (discussing policy choices needed to keep family farms alive).
84. *See id.* (discussing policy choices needed to help farmers remain independent).
85. *See* Haroldson, *supra* note 8, at 400.
86. *See* Thomas W. Paterson & Willard F. Mueller, *Sherman Section 2 Monopolization for Agricultural Marketing Cooperatives*, 60 TUL. L. REV. 955, 965 (1986).
87. *See id.* at 964.
88. *See id.* at 965.
89. *See id.* at 964-65.

1. *Sherman and Clayton Acts*

Agricultural cooperatives, however, fell victim to the 1890 Sherman Act.[90] Section 1 outlawed competitive practices and Section 2 outlawed monopolies.[91] The 1914 Clayton Act further defined and banned price discrimination:

> Where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.[92]

The Clayton Act, however, recognized that farmer cooperatives had been banned under the Sherman Act.[93] It made an exception for labor, agricultural, and horticultural associations (including farmer cooperatives), allowing to exist as long as they did not own stock or operate for profit.[94]

2. *Capper-Volstead Act*

The 1922 Capper-Volstead Act further and explicitly gave power to cooperatives, which had passed a resolution complaining of gouging by middlemen. Senator Capper stated:

> Middlemen who buy farm products act collectively as stockholders in corporations owning the business and through their representatives buy of farmers, and if farmers must continue to sell individually to these large

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90. *See* Stephen D. Hawke, Note, *Antitrust Implications of Agricultural Cooperatives*, 73 KY. L.J. 1033, 1037 (1984).

> Ironically, farmers were one group which strongly supported the Sherman Act since they were vulnerable to industry's monopolistic practices. *See* Tigner v. Texas, 310 U.S. 141, 145 (1940). When the Sherman Act was enacted, Congress was concerned that the Act would prohibit farmer associations. Congress' fears may have been well-founded since the Supreme Court indicated that cooperatives fell within the scope of the Sherman Act. 'The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers . . . from the operation of the Act and that all these efforts failed, so that the Act remained as we have it before us.' Loewe v. Lawlor, 208 U.S. 274, 301 (1908) (dictum).

See id. at 1037 n.11.

91. *See* 15 U.S.C. § 1-2 (1994). "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." 15 U.S.C. § 1 (1994). "[E]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . . ." 15 U.S.C. § 2 (1994).

92. *Id.* § 13(a).

93. *See id.*

94. *See id.* § 17.

> aggregations of men who control the avenues and agencies through and by which farm products reach the consuming market, then farmers must for all time remain at the mercy of the buyers.[95]

The Capper-Volstead Act allowed cooperatives to issue stock in order to raise capital:

> Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged.[96]

The Act required that: (1) each member be limited to one vote, regardless of the amount of stock that he owns in the cooperative; (2) the association not pay dividends in excess of eight percent per year to stockholders; and (3) the association not deal in the products of non-members to an amount greater in value than the products dealt with for members.[97] In effect, this last rule prevents the cooperative itself from becoming a middleman.[98]

The Capper-Volstead Act also gave teeth to the Secretary of Agriculture, allowing him or her to seek court action against. "[A]ny such association [that] monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof . . . ."[99]

3. *Other Acts*

The 1926 Cooperative Marketing Act allowed persons engaged in agriculture to "acquire, exchange, interpret, and disseminate past, present, and prospective crop, market, statistical, economic, and other similar information by direct exchange between such persons, and/or such associations or federations thereof, and/or by and through a common agent created or selected by them."[100] In other words, multiple agricultural cooperatives could cooperate so as to set a common price for their prices.[101] The Robinson-Patman Anti-Discrimination Act amended the Clayton Act to forbid "[a]ny person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered."[102] In essence, a buyer or seller could not

95. 62 CONG. REC. 2058 (1922).
96. 7 U.S.C. § 291 (1994).
97. *See id.*
98. *See* 62 CONG. REC. at 2058 (statement of Sen. Capper).
99. 7 U.S.C. § 292 (1994).
100. *Id.* § 455.
101. *See id.*
102. 15 U.S.C. § 13(c) (1994).

be bribed into dealing exclusively with one association or dealing unfairly between associations.[103] Similarly, an association could not be induced to deal exclusively with one buyer.[104] The act similarly outlawed the discrimination in rebates, discounts, or advertising service charges.[105]

The Agricultural Marketing Agreement Act of 1937 authorized the Secretary of Agriculture to establish reasonable prices between farmers and processors.[106] It also allowed the Secretary of Agriculture to prohibit unfair methods of competition and practices in the handling of agricultural products.[107]

B. *Judicial Interpretation*

1. *Introduction*

Cooperatives, despite their noble purposes, can fall victim to the same greedy nature associated with the processors and middlemen with which they attempt to compete. Some cooperatives are like tigers: cute when they are small, but ferocious once they grow up. The following cases mainly demonstrate that the specific allowances of the Capper-Volstead Act, Agricultural Marketing Agreement Act, and similar laws, do not excuse cooperative associations, once formed, from the broad rules of the Sherman Act prohibiting anti-competitive practices.[108] It appears that the definition of "farmer" is crucial in determining whether modern industrial producer associations are immune from anti-trust prosecution.[109]

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103. *See id.* § 13(a)-(c).
104. *See id.* § 13(a).
105. *See id.*
106. *See* 7 U.S.C. § 602(1) (1994).
107. *See id.* § 602(2)-(3).
108. *See generally* United States v. Borden Co., 308 U.S. 188 (1939) (dismissing notion that cooperatives were immune from all cases); Maryland & Virginia Milk Producers Ass'n v. United States, 362 U.S. 458 (1960) (holding Capper-Volstead Act did not grant farmers the ability to restrain trade by any means); Case-Swayne Co. v. Sunkist Growers, Inc., 389 U.S. 384 (1967) (holding capital associations did not qualify as non-members who could do business with the association without violating the Capper-Volstead Act); National Broiler Mktg. Ass'n v. United States, 436 U.S. 816 (1978) (holding not all persons involved in agricultural production are covered by the Capper-Volstead Act). *But see* Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037 (2d Cir. 1980) (holding that cooperative was allowed by the Capper-Volstead Act to acquire a monopoly position without violating Section 2 of the Sherman Act).
109. *See, e.g.*, Case-Swayne Co., 389 U.S. at 391 (holding that Capper-Volstead Act was intended to cover only actual producers of agricultural products specified in the act); National Broiler Mktg. Ass'n v. United States, 436 U.S. at 827-28 (holding that producer of broiler chickens was not a "farmer" and thus not covered by the Capper-Volstead Act when it employed someone else to tend the chickens during growth).

2. United States v. Borden Co.

In the *Borden* case, the Supreme Court dismissed the notion that cooperatives were immune from all complaints other than those brought by the Secretary of Agriculture.[110] The case involved the combination of milk cooperatives, non-cooperative corporations and distributors, and municipal officials (including the president of the Board of Health) to fix the price of fluid milk moving into Chicago from surrounding states.[111] The defendants had claimed that both the Agricultural Marketing Agreement Act and the Capper-Volstead Act granted them immunity from prosecution under section 1 of the Sherman Act.[112]

The lower court had ruled that, since the Agricultural Marketing Agreement Act gave the Secretary of Agriculture complete power over the production and marketing of agricultural commodities, even his failure to act could be interpreted as the tacit authorization and exemption of ongoing activities from the provisions of the Sherman Act.[113] The Supreme Court strongly disagreed, explaining that the Secretary of Agriculture must be a party to agreements for the parties to the agreement to receive immunity.[114] The agreement between the Secretary and producers had been in place until March 1935, but the agreement did not protect them beyond that point.[115]

The lower court, with regard to the Capper-Volstead Act, determined that since the Secretary of Agriculture had the power to bring complaints against associations which unduly affected prices; that all other actions, including prosecution under the Sherman Act, were prohibited unless initiated by the Secretary.[116] Once again, the Supreme Court disagreed, clarifying that the Secretary's ability to limit such behavior did not also allow him to authorize such restraints of trade.[117]

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110. *See Borden Co*., 308 U.S. at 205-06.
111. *See id.* at 191.
112. *See id.*
113. *See id.* at 196-97.
114. *See id.* at 198. The Court concluded that:

> While effect is expressly given, as we shall see, to agreements and orders which may validly be made by the Secretary of Agriculture, there is no suggestion that in their absence, and apart from such qualified authorization and such requirements as they contain, the commerce in agricultural commodities is stripped of the safeguards set up by the Anti-Trust Act and is left open to the restraints, however unreasonable, which conspiring producers, distributors and their allies may see fit to impose.

Id.

115. *See id.* at 202.
116. *See id.* at 205.
117. *See id.* at 206. The Court found there was:

> [N]o ground for saying that this limited procedure is a substitute for the provisions of the Sherman Act, or has the result of permitting the sort of combinations and conspiracies here charged unless or until the Secretary of Agriculture takes action . . . . We think that the procedure under § 2 of the Capper-Volstead Act is auxiliary and was

3. United States v. Maryland & Virginia Milk Producers Ass'n

In *Virginia & Maryland Milk Producers Ass'n*, the government charged that the association of over 2000 milk producers, which controlled eighty-six percent of the fluid milk market around Washington, D.C., had engaged in a variety of anti-competitive practices.[118] As in the *Borden* case, the association argued that the Capper-Volstead Act gave the Secretary of Agriculture primary jurisdiction in such violations, and that the Secretary's powers superseded the Sherman Act.[119] The Supreme Court replied to this first argument by following the precedent established in the Borden case: The failure of the Secretary of Agriculture to condemn violations of the Sherman Act does not translate to the condoning of those violations.[120]

The Association also argued that section 1 of the Capper-Volstead Act and section 6 of the Clayton Act wholly exempted them from anti-trust prosecution under the Sherman Act.[121] The Supreme Court responded that while the Capper-Volstead Act gave farmers permission to act in associations, it did not grant them the ability to restrain trade by any means.[122] The Association's numerous anti-competitive practices, including interference with shipments, boycotts, and the persuasion of competitors to leave the Washington, D.C. market, were therefore found to violate

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> intended merely as a qualification of the authorization given to cooperative agricultural producers by § 1, so that if the collective action of such producers, as there permitted, results in the opinion of the Secretary in monopolization or unduly enhanced prices, he may intervene and seek to control the action thus taken under § 1.

Id.

118. *See Maryland & Virginia Milk Producers Ass'n*, 362 U.S. at 460. The complaint brought by the United States charged that the Association had:

> (1) attempted to monopolize and had monopolized interstate trade and commerce in fluid milk in Maryland, Virginia and the District of Columbia in violation of § 2 of the Sherman Act; (2) through contracts and agreements combined and conspired with Embassy Dairy and others to eliminate and foreclose competition in the same milk market area in violation of § 3 of that Act; and (3) bought all the assets of Embassy Dairy, the largest milk dealer in the area which competed with the Association's dealers, the effect of which acquisition might be substantially to lessen competition or to tend to create a monopoly in violation of § 7 of the Clayton Act.

Id. at 460-61.

119. *See id.* at 462-63.

120. *See id.* at 463.

121. *See id.*

122. *See id.* at 466.

> [The Capper-Volstead Act makes] it possible for farmer-producers to organize together, set association policy, fix prices at which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating the antitrust laws. It does not suggest a congressional desire to vest cooperatives with unrestricted power to restrain trade or to achieve monopoly by preying on independent producers, processors or dealers intent on carrying on their own businesses in their own legitimate way.

Id.

section 2 of the Sherman Act.[123] The acquisition of the association's main competitor, in order to create a monopoly, was found to be a violation of section 7 of the Clayton Act.[124] Finally, a contractual agreement that the former owners of that competing dairy would not re-enter the market for ten years, and the excessive price paid for that dairy, were found to violate section 3 of the Sherman Act.[125]

The *Virginia & Maryland Milk Producers Ass'n* case demonstrates the "legitimate objects" test for cooperatives.[126] While the Clayton and Capper-Volstead Acts allow farmers to act as an association, the intent of these Acts are to give those farmer associations the same legitimacy as corporations.[127] The Acts do not allow associations to act in any way that they see fit.[128]

4. April v. National Cranberry Ass'n

April v. National Cranberry Ass'n is yet another case in which the defendant association argued that the Capper-Volstead Act granted it immunity from prosecution under sections 1 and 2 of the Sherman Act.[129] Once again, the court refused this argument:

> [W]hen Capper-Volstead provided that a cooperative and its members were not to be prohibited from "lawfully carrying out the legitimate objects thereof . . ." (to use the language of section 6 of the Clayton Act), at least it did not make lawful purely predatory practices seeking to monopolize, forbidden to an individual corporation, nor did it deprive the victims of such practices effected with monopolizing intent of their private right of action under section 4 of the Clayton Act.[130]

5. Case-Swayne Co. v. Sunkist Growers, Inc.

In this case, Case-Swayne argued that Sunkist had violated section 1 of the Sherman Act.[131] Sunkist argued for protection under the Capper-Volstead Act.[132] The court, however, noted that the cooperative was composed of about 160 associations, of which about fifteen percent were private.[133] The private Associations' relationships to the growers were: "Defined not by a cooperative agreement but by a

123. *See id.* at 468.
124. *See id.* at 469.
125. *See id.* at 470-71.
126. *See* 14 NEIL E. HARL, AGRICULTURAL LAW § 137.06[2] (1996).
127. *See* 7 U.S.C. § 291 (1994).
128. *See id.* § 292.
129. *See* April v. National Cranberry Ass'n, 168 F. Supp. 919, 919 (D. Mass. 1958).
130. *Id.* at 923.
131. *See* Case-Swayne Co. v. Sunkist Growers, Inc., 389 U.S. 384, 389 (1967).
132. *See id.* at 389-90.
133. *See id.* at 386-87.

marketing contract, for example, these packing houses contract with each grower to handle his fruit for cost plus a fixed fee."[134] The court determined that these capital associations operated only for their own profit and not to increase the profit share of the cooperative.[135] Therefore, they did not qualify as nonmembers who could do business with the Association without violating the Capper-Volstead Act.[136]

6. National Broiler Marketing Ass'n v. United States

The *National Broiler Marketing Association* ("NBMA") case applied the Capper-Volstead Act to modernized, industrial agriculture: the broiler chicken industry.[137] The NBMA, charged with violating Section 1 of the Sherman Act, had claimed immunity as a cooperative under the Capper-Volstead Act.[138] Lower courts disagreed as to whether the members of NBMA were actually "farmers" as determined by the Act.[139]

NBMA members typically bought hatched chicks and placed them with independent growers who then raised them on contract.[140] NBMA members then slaughtered, dressed, and marketed the chickens.[141] The court found significance in the wording of the Capper-Volstead Act, which grants limited immunity to "[p]ersons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers . . . ."[142] In other words, not all persons involved in agricultural production are covered by the Capper-Volstead Act, even though they may be exposed to the costs and risks of agricultural production.[143] The Court in this case determined that the members of NBMA were not "farmers" as intended by the Act, but rather, no different than processors.[144]

In dissent, Justices White and Stewart noted that producers of broiler chickens faced the same oligopolistic forces as did farmers—the necessity of price taking in order to sell their perishable product.[145] The Justices also argued that

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134. *Id.* at 387.
135. *See id.*
136. *See id.* at 395.
137. *See* National Broiler Mktg. Ass'n v. United States, 436 U.S. 816, 817-18 (1978).
138. *See id.* at 818-19.
139. *See id.* at 819-20.
140. *See id.* at 820-21.
141. *See id.* at 821.
142. 7 U.S.C. § 291 (1994).
143. *See National Broiler Mktg. Ass'n*, 436 U.S. at 826-27.
144. *See id.* at 827-28. The Court ruled that:

> The economic role of such a member in the production of broiler chickens is indistinguishable from that of the processor that enters into a preplanting contract with its supplier, or from that of a packer that assists its supplier in the financing of his crops. Their participation involves only the kind of investment that Congress clearly did not intend to protect.

Id.

145. *See id.* at 843-44 (White, J., dissenting). The Dissent reasoned that:

NBMA members were hardly processors, since they were involved in the production of the chickens.[146] Therefore, the NBMA should be granted the same immunity as farmers' cooperative associations under the Capper-Volstead Act.[147]

7. Fairdale Farms v. Yankee Milk

In this case, Yankee Milk, Inc. and Regional Cooperative Marketing Agency, Inc. ("RCMA") were accused of illegally fixing raw milk prices in violation of section 1 of the Sherman Act, and attempting to obtain a monopoly in violation of section 2 of the Sherman Act.[148] With regard to section 1 of the Sherman Act, Fairdale contended "that RCMA does not have the same price-fixing right as does Yankee" under the Capper-Volstead Act.[149] It claimed that "Capper-Volstead gives only single cooperatives, not associations of cooperatives, the right to fix prices," and "that a cooperative association organized for the sole purpose of fixing prices is not entitled to Capper-Volstead protection."[150] The court responded that Capper-Volstead allowed cooperatives to have marketing agencies in common, and the determination of prices falls within the "marketing" allowance of that act.[151]

The court determined that RCMA was allowed by the Capper-Volstead Act to acquire a monopoly position without violating section 2 of the Sherman Act.[152]

> The overwhelming demand is for fresh, not frozen, 8-to-10-week-old broiler chickens, and integrators must sell their produce within four days of slaughter. The result is a buyer's market. And the buyers in this market are few and powerful: "[T]he market for broilers is oligopsonistic, dominated by large retail chains such as A & P, Kroger and Safeway and institutional food outlets such as Kentucky Fried Chicken." A recurrent pattern of prices below actual cost to the producer has been observed since the start of the current decade.

Id. (White, J., dissenting) (quoting Charles Gordon Brown, *United States v. National Broiler Marketing Association: Will the Chicken Lickin' Stand?*, 56 N.C. L. REV. 29, 44 (1978)).

146. *See id.* at 844 (White, J., dissenting). The Dissent opined:

> It is inaccurate to equate broiler producers with processors of agricultural commodities, even those with preplanting contracts. Such an equation ignores the important distinction that members of the NBMA are all producers of broilers, whereas a mere processor of an agricultural commodity is not a producer. The Act extends protection to "[p]ersons engaged in the production of agricultural products as farmers."

Id. (White, J., dissenting) (quoting 7 U.S.C. § 291 (1994)).

147. *See id.* at 849 (White, J., dissenting).

148. *See* Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, 1038 (2d Cir. 1980).

149. *Id.* at 1039.

150. *Id.*

151. *See id.* at 1040.

152. *See id.* at 1045.

> The offense of monopoly under Section 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. (384 U.S. at 570-71, 86 S.

C. *Arguments*

Most law reviews contend that cooperatives offer well-deserved advantages to farmers.[153] This is a point with which I agree. Jim Chen, however, offers an acetic, if not downright mean, argument against the legal allowances granted to cooperatives. He argues that cooperatives are just one example of legislation that, by putting farmers first, it essentially puts consumers and the environment last.[154] Chen and others opposed to cooperatives exemptions believe that agriculture is unfairly treated differently than other industries: In other words, America can fix its agricultural policy simply by treating agriculture like any other industry, as subject as toilet seat manufacturers to the fickle fluctuations of bourgeois consumer demand.[155] Behold, the Consumerist Manifesto: "Let the farming classes tremble at the feet of consumerism and competition. Bourgeois food consumers have nothing to lose but their bucolic illusions."[156]

Perhaps Chen has not spent enough time around the farm.[157] The production of farm products can hardly compare to the production of toilet seats or any other industrial product.[158] Farmers can lose part of their crop in one year, and be equally damned by a bumper crop and low prices in the following year.[159]

Unfortunately, the farmer cannot respond to market forecasts and changing prices once his crop has been planted.[160] Farmers are also faced with perishable

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> Ct. at 1703). Our review of the above authorities persuades us that the effect of Capper-Volstead is to prevent the full application of the second element of this test to agricultural cooperatives. Capper-Volstead permits the formation of such cooperatives and places no limitation on their size. As the cooperative grows, so, normally, does its power over the market. Thus, while the formation, growth and operation of a powerful cooperative is obviously a 'willful acquisition or maintenance of such power,' and will rarely result from 'a superior product, business acumen, or historic accident,' id., it is exactly what Capper-Volstead permits.

Id.

153. *See, e.g.*, Neil D. Hamilton, *Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 DRAKE L. REV. 289, 301 (1997); Stout, *supra* note 81, at 845; Hawke, *supra* note 90, at 1042.

154. *See* Chen, *supra* note 57, at 844-59.

155. *See id.* at 873.

156. *Id.* at 877.

157. This comment by the author is in direct response to the following quote in Chen's article. "Only those observers with no formal ties to the American agricultural establishment seem willing to cast truth-seeking light on the ultimate normative issue: whether bilateral oligopoly as shaped by the Capper-Volstead Act and allied statutes benefits consumers." *Id.* at 814.

158. *See id.* at 873.

159. *See* Steffen N. Johnson, *A Regulatory 'Wasteland': Defining a Justified Federal Role in Crop Insurance*, 72 N.D. L. REV. 501, 511 (1996).

160. *See, e.g.*, Christopher Kelley & James Lodoen, *Federal Farm Program Initiatives: Past, Present, and Future*, 9 WTR NAT. RESOURCES & ENV'T 17, 19 (1995).

goods that must either be sold or lost.[161] Slaughtered chickens, milk, and produce cannot be crated and stored in a warehouse next to toilet seats until market prices improve.[162]

Chen also argues that, "[n]othing symbolizes agriculture's ideological isolation from the legal and economic culture of American business as dramatically as the battery of exemptions shielding agricultural cooperatives from antitrust liability."[163] The case review in this article rebuts any argument in this area. The exemptions granted to agricultural cooperatives were only intended to allow them to act in a manner similar to corporations, and the American courts are strict in limiting cooperatives these allowances.[164] Despite what Chen may argue, the allowance of farmers to collectively bargain for a fair price is no different than a labor union's demand for a fair wage.

One legitimate concern raised by Chen is the incredible success achieved by a few cooperatives.[165] For example, Sunkist once controlled two-thirds of the Florida orange juice market.[166] The sales of even the most productive cooperatives, however, are tiny compared to those of commercial processors; the sales of those processors would be even larger without the competition of agricultural cooperatives.[167] Still, the more liberal allowances to cooperatives, such as exchanging pricing information as permitted under the Cooperative Marketing Act, should be reviewed with regard to the largest associations.[168] In addition, the Secretary of Agriculture has power under the Capper-Volstead Act to prevent cooperatives from gaining monopolies, and should use this power accordingly.[169]

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161. *See, e.g.*, Keith Meyer, *Should the Unique Treatment of Agricultural Liens Continue*?, 24 IND. L. REV. 1315, 1348 (1991).

162. *See, e.g.*, *id.*

163. Chen, *supra* note 57, at 811.

164. *See* Paterson & Mueller, *supra* note 86, at 960.

165. Chen, *supra* note 57, at 810.

> The 1993 Fortune 500 included: Farmland Industries (145), Agway (149), Land O' Lakes (181), Mid-America Dairymen (230), Farmers Union Central Exchange (238), Gold Kist (287), Ag Processing (325), Ocean Spray (336), Tri Valley Growers (411), Prairie Farms Dairy (458), Riceland Foods (466), and Sun-Diamond Growers (476).

Id. at 810 n.2. *See also* Edmund Faltermayer, *The Fortune 500 Largest U.S. Industrial Corporations*, Fortune (April 19, 1993) at 174, 234.

166. *See id.* at 814.

167. *See id.* at 811 n.2.

> Admittedly, these cooperatives' sales paled in comparison with those of the largest shareholder-owned agribusiness firms, such as Philip Morris (7), Conagra (18), Sara Lee (33), Archer Daniels Midland (50), General Mills (68), and Ralston Purina (69). See id. at 232 (showing that each of these firms enjoyed three to 20 times the sales volume commanded by Land O' Lakes).

Id. at 810 n.2.

168. *See id.* at 877.

169. *See* 7 U.S.C. § 292 (1999).

V. CONCLUSION

Limits on corporate farms and the immunity of agricultural cooperatives from anti-trust prosecution are two good steps towards preserving smaller family farms.[170] Current anti-corporate farm laws, however, are only hollow gestures towards that tradition.[171] Family farm exceptions should apply to true families actively engaged in farming, rather than to any corporation with related stockholders and one token farmer.[172] In recognition that rural health depends on maintaining or increasing the number of farms per community, laws should limit family and authorized corporations to the land amount that a family or small business could actively farm.[173] Iowa and Minnesota are leading in this concept.[174] As the courts suggest, legislatures are limited only by their own ideas with regard to the constitutionality of these laws.[175]

Agricultural cooperatives continue to provide a means for farmers to increase their bargaining power in selling their products.[176] The courts have consistently upheld the right of farmer associations to form, process, market, and even bargain collectively with other associations, without facing prosecution under the Sherman or Clayton Acts.[177] The courts have also reminded cooperatives, however, that they are not immune from prosecution if they employ anti-competitive practices—such as price fixing, harassing competitors, or actively acquiring a monopoly—that would be frowned upon if committed by a corporation.[178]

In those states that choose to reject the short-term incentives offered by large farming corporations in favor of a longer-term approach to rebuilding the prosperity of their communities, cooperatives can play a large role.[179] In Iowa, for example, we are blessed with some of the most fertile soil in the world, along with ideal growing

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170. *See, e.g.*, National Broiler Mktg. Ass'n v. United States, 436 U.S. 816, 817 (1978); Case-Swayne Co .Sunkist Growers, Inc., 389 U.S. 384, 385 (1967); Maryland & Virginia Milk Producers Ass'n v. United States, 362 U.S. at 458; United States v. Borden Co., 308 U.S. 188, 189 (1939); Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, 1038-39 (2d Cir. 1980); Haroldson, *supra* note 8, at 400.

171. *See infra* p. 12.

172. *See infra* pp. 12-13.

173. *See infra* pp. 12-14.

174. *See* Act of Apr. 16, 1998, ch. 1110, §§ 101-110, 1998 Iowa Legis. Serv. 231 (West) (to be codified at IOWA CODE chs. 10, 10B (1999)); MINN. STAT. ANN. § 500.24(2)(d) (West 1990 & Supp. 1999).

175. *See infra* p. 7.

176. *See infra* p. 16.

177. *See infra* pp. 17-18.

178. *See Maryland & Virginia Milk Producers Ass'n*, 362 U.S. at 458-59.

179. *See* NEB. CONST. art. XII, § 8(1); OKLA. CONST. art. XXII, § 2; IOWA CODE § 9H.4 (1999); KAN. STAT. ANN. § 17-5904 (1995 & Supp. 1998); MINN. STAT. ANN. § 500.24(3) (West 1990 & Supp. 1999); MO. ANN. STAT. § 350.015 (West 1991 & Supp. 1999); N.D. CENT. CODE § 10-06.1-02 (1995 & Supp. 1999); S.D. CODIFIED LAWS § 47-9A-3 (Michie 1991); WIS. STAT. ANN. § 182.001 (West 1992).

conditions for highly-productive crops such as corn. What we need is better marketing and processing to increase the value of our products and keep profits at home. We do not need Murphy Family Farms or a larger corporation to accomplish these goals, but can accomplish them with skillfully managed cooperatives and independent farmers. If we achieve these goals, no production facility on the compacted Carolina sands will be able to compete.