

## FEEDING THE WORLD'S FUTURE: AGRARIAN JUSTICE AND THE RULE OF LAW

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### I. INTRODUCTION – APPLYING THE TECHNOLOGIES OF JUSTICE TO AGRICULTURE

Through the course of history, the social and political economies of the world's nations have been shaped by the success of their farmers. The performance of a nation's agriculture influences many things: the creation of wealth, the development of communities and social relations, the economic progress in businesses, the adequacy and quality of peoples' diets, trade relations with other nations, and the conservation of land and natural resources. While many nations have moved well beyond the period of agrarian development – no country, regardless how advanced, can free itself from agriculture as long as people need daily nourishment. Even for political economies as sophisticated as the United States and Japan, our agricultural sectors continue to play critical roles as economic engines and as political and cultural bulwarks. For developing nations, like India and China, where hundreds of millions of citizens struggle to survive as peasants, small farmers, and laborers; for emerging capitalist economies, like Poland and Ukraine, where small landholders struggle to find their way in market economies; and especially for nations facing serious challenges of poverty and hunger, like most countries in Africa; the performance of agriculture is critical, not just to the health and survival of the nation's people, but even to the political stability and survival of governments, as now evidenced by the tragedy unfolding in Haiti.<sup>1</sup> In the last year the world has seen vivid evidence of the tenuous grasp

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1. See Jonathan M. Katz, *Haiti's Food Crisis Deepens After Floods*, ASSOCIATED PRESS ARCHIVE, Sept. 19, 2008, available at NEWSBANK ACCESS WORLD NEWS, Rec. No. D939V0600.

billions of the poor have on food security. The world has also seen how quickly circumstances can change – whether as a function of the weather and a changeable climate, or of drastic changes in the demand and use of foods and biofuels, or of the fragile state of peace in the face of rampant drug production<sup>2</sup> and ethnic and political strife. This period has been marked by rapid increases in food prices, growing incidence of hunger and malnutrition, concerns over the degradation of land and the environment, and riots and social unrest over food costs in more than thirty nations.<sup>3</sup> If nothing else, this period of stress and concern over food should help make clear the connection between the quest for world peace and political stability and the success and economic health of the world's farmers. The continuing and critical role of food, and the farmers and land producing it, place a premium on understanding what factors shape agriculture and what role the actions of governments can play.

Many factors influence the performance of agriculture – whether at the level of an individual farm family or collectively as a nation. The fertility of soils, the productivity of seeds, the progress of technologies, the vagaries of weather, the costs of inputs like fuel and fertilizer, and of course the prices for crops and the existence of open markets are the most commonly recognized determinants of agricultural success. While all are important, other factors not as commonly recognized or acknowledged can play fundamental roles in the suc-

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2. See, e.g., Carlotta Gall, *Governor of Afghan Opium Capital Pushes for Crop Replacement*, N.Y. TIMES, Oct. 4, 2008, at A8 (discussing increases in poppy production and the challenge of providing farmers with alternative crops and markets).

3. See, e.g., Elisabeth Malkin, *Thousands in Mexico City Protest Rising Food Prices*, N.Y. TIMES, Feb. 1, 2007, at A6 (discussing some of the first large scale public protests relating to the increase in food prices and the alleged connection between corn policies in the United States and corn imports and tortilla prices in Mexico); Somini Sengupta, *India's Growth Outstrips Crops*, N.Y. TIMES, June 22, 2008, at A1 (concerning the limited growth in Indian agricultural production and the challenges it faces in trying to develop the right policies and technologies to increase food production); Keith Bradsher, *From Six-Year Drought in Australia, a Global Crisis over Rice*, N.Y. TIMES, Apr. 17, 2008, at A1 (noting the impact of the long-term drought in Australia on cumulative world production and supplies of rice, which has had the effect of pressuring rice producing nations to adopt policies such as restrictions on exports which in turn have served to further exacerbate the world food crisis); Jeffrey Gettleman, *Famine Looms as Wars Rend Horn of Africa*, N.Y. TIMES, May 17, 2008, at A1 (concerning the increasing incidence of hunger in the region, driven in part of the political turbulence and violence); Jeffrey Gettleman, *Darfur Withers as Sudan Sells a Food Bonanza*, N.Y. TIMES, Aug. 10, 2008, at A1 (noting that even as Sudan has received over a billion pounds of free food from international donors it has continued to grow and export large amounts of food, indicating a policy of allowing starvation in portions of the country); Celia W. Dugger, *Kenyan Farmers' Fate Caught up in U.S. Aid Rules that Benefit Agribusiness*, N.Y. TIMES, July 31, 2007, at A8 (concerning the increase in food prices and hunger and the impact on Kenyan farmers of U.S. policies which don't allow the purchase of locally produced grain for food aid, but instead compete with local farmers with deliveries of higher price but subsidized U.S. grain).

cess of agriculture. Chief among these are the operation of law in the economic and political life of farms and businesses and the effectiveness of government policies in forwarding the objectives set by the nation's political leaders. The fortunes of farmers are a function of their access to land, the security of their property, the availability of credit, and their capacity to sell products in open markets. The ability of farmers to till the land and thrive is directly shaped by the predictability and stability of the legal and economic environment in which they operate. The ability to enter a contract knowing it can be enforced, the security of buying or renting land and knowing the title will be respected, and applying for public assistance in confidence the state will continue to exist are all reflections of how the legal system and the rule of law contribute to the success of agriculture. In today's world, we routinely turn to the state in the form of governments (local, state or national) to provide support and stability to the economy. Whether this takes the form of protecting the integrity and operation of open markets, insuring the wholesomeness and safety of our food, or providing economic relief in times of natural disasters; these are among the ways public actions or policy provide a framework in which the private economic relations making up agriculture can thrive. People typically refer to the process of forwarding these goals as the development of policy, but lawyers recognize that the term “policy” is not self-actuating. Instead, specific statements of government intent take the form of legislation, laws, regulations and rules that give shape and definition to the goals of policy. In reality, law is what puts legs under policy.

Given this fundamental role of law in shaping the success of agriculture it is surprising how little recognized and how seldom the relation of law to agriculture is acknowledged.<sup>4</sup> For example, within the system of international agriculture research centers, such as for potatoes in Peru and rice in Manila, no center specifically addresses the role of law in shaping agriculture. The international research consortium, known as the Consultative Group for International Agricultural Research (CGIAR), does include the International Food Policy Research Institute (IFPRI) located in Washington D.C. But even this group, with policy in its name, does not have a single lawyer among its hundreds of employees, most of whom focus primarily on economic analysis. Another example of the com-

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4. Twenty years ago, I made a three week lecture tour in the Soviet Union focused on farm leasing practices, then of great interest due to President Gorbachev's proposal to allow forms of privatization in access to farmland. After visiting with many Soviet agriculture officials, it was clear that land reform was only one element in what was needed to make Soviet agriculture more productive. Anyone considering becoming a private farmer also faced a lack of access to credit, no markets to sell products, and little predictability and enforceability of land titles. Upon coming home, I wrote an article reflecting on how law contributes to the productivity and success of American agriculture. See Neil D. Hamilton, *The Role of the Law in Shaping the Future of American Agriculture*, 38 *DRAKE L. REV.* 573 (1988-1989).

mon failure of officials involved in international development work to appreciate the role and power of legal systems in making economic and social development possible can be seen in Jeffrey Sachs' newest book, *Common Wealth: Economics for a Crowded Planet*.<sup>5</sup> This interesting book of over 380 pages, written by perhaps one of the most influential international economic advisors, makes one specific reference to the law.<sup>6</sup> In speaking about what basic conditions governments must insure are in place to support development he lists "a rudimentary legal system to enforce contracts and property rights."<sup>7</sup> One might expect a book replete with policy ideas and grand plans for supporting international development would recognize the somewhat more central role of law, but this failing is a common one and not just of economists. As the leaders of nations and the world seek answers on how to feed the hungry, protect the sustainability of fertile land, and safeguard the economic success of farmers; the elegance and power of the law and the ingenuity of legislation – what we can call the "technologies of justice"<sup>8</sup> – must be enlisted. One initiative now underway in the United States provides a fresh opportunity to examine and articulate the role of law in promoting the health of agriculture. The American Bar Association (ABA) has embarked on an international education campaign known as the Rule of Law Initiative, which it describes as "a public service project...dedicated to promoting rule of law around the world. The ABA Rule of Law Initiative believes that rule of law promotion is the most effective long-term antidote to the pressing problems facing the world community today, including poverty, economic stagnation, and conflict."<sup>9</sup> One dimension of the initiative is the World Justice Project that has the primary goal of promoting the rule of law as a foundation for free and open societies.<sup>10</sup> These initiatives are based on the core recognition that law contributes to the progress of democracy and the stability of society.

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5. See JEFFREY D. SACHS, *COMMON WEALTH: ECONOMICS FOR A CROWDED PLANET* (2008).

6. *Id.* at 212.

7. *Id.*

8. Raj Patel, San Francisco Food for Thought Lecture at Slow Food Nation Weekend (Aug. 29, 2008) (first time author heard the term "technologies of justice").

9. American Bar Association, Rule of Law Initiative, <http://www.abanet.org/rol> (last visited Nov. 27, 2008).

10. See The World Justice Project, <http://www.worldjusticeproject.org/> (last visited Nov. 27, 2008). Former ABA President Bill Neukom was a key leader in the development and implementation of the World Justice Project and in advancing the Rule of Law initiatives that embody it. See generally William H. Neukom, *Sharpening Our Focus*, A.B.A. J., Aug. 2008, at 9 (discussing the World Justice Project's Rule of Law index which examines "whether a nation's laws are fairly and efficiently enforced, whether they protect the security of people and property, and whether they provide an effective remedy for violations of fundamental rights."); James Podgers, *A Vienna Convergence*, A.B.A. J., Aug. 2008, at 63 (quoting Neukom as stating that it is "a

The goal of this Article is to use the premise of the Rule of Law Initiative, i.e., law can provide both a framework and process for equitable and sustainable social development, as a way to examine how law relates to farming, land, and food. While the ABA’s initiatives have not yet explicitly recognized the role of law in agriculture, this Article uses current international controversies to illustrate both the existence and the significance of this connection. The Article articulates the fundamental role of law in shaping successful and sustainable food and agriculture systems of the type needed for human development by identifying twelve principles of agrarian justice. These principles are illustrated by the legal issues embedded in the news stories fueling international debates about food and farming, thereby demonstrating what the rule of law means in the context of food and agriculture. The Article concludes with suggestions for how the legal community (lawyers, judges, politicians, law professors, and students) can engage in activities that demonstrate and enhance our understanding of how law can set the foundation for productive, sustainable, and profitable food and farming systems.

## II. THE RULE OF LAW: HOW IT SHAPES FARMING, FOOD, AND THE LAND

The “rule of law” is a concept familiar to any law student or lawyer. It means, essentially, the expectation that the rights of people, our relations with others, and the role of government and its impact on our lives will be determined by established and knowable rules. Further, we expect these rules or laws to have been developed by democratically elected bodies and enforced in open tribunals by judges and public officials accountable for their actions. This transparency and predictability of law as well as the legitimacy and respect for the processes through which law is made helps insure that we as citizens will respect and abide by legal rulings. It also means that we lead our lives with the understanding that they are shaped by laws, and with an expectation our actions and those of others, as well as of our governments, will be based on legal rules. The ABA’s World Justice Project is premised on the observation that a fair, functioning system of laws “is the foundation for communities of opportunity and equity,” and that in the absence of the rule of law, violence, poverty, corruption, sickness, and ignorance flourish.<sup>11</sup>

The ABA’s Rule of Law Initiative is an effort to increase understanding of law and to promote the use of legal tools in social progress. The Rule of Law

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shared understanding that the purpose of the rule of law is to help create communities of equity and opportunity for their citizens.”).

11. See The World Justice Project, *supra* note 10.

Initiative, as articulated in the World Justice Project, is grounded on four universal principles:

1. The government and its officials and agents are accountable under the law;
2. The laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property;
3. The process by which laws are enacted, administered and enforced is accessible, fair and efficient;
4. The laws are upheld, and access to justice is provided, by competent, independent, and ethical law enforcement officials, attorneys or representatives, and judges who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.<sup>12</sup>

The ABA's Rule of Law initiative involves a series of activities, including: support for scholarship regarding the importance of the rule of law, the development of a Rule of Law Index as a way to measure how well nations adhere to the rule of law, and sponsorship of the World Justice Forum held in Vienna in July 2008.<sup>13</sup> All these activities are designed to help increase the recognition and awareness of the role law plays – in effect a “mainstreaming” of the rule of law through outreach and education.<sup>14</sup>

While the rule of law may be a given to those whose education or careers immerse them in legal studies; for the rest of society, the vast majority of citizens who are not lawyers, the recognition or appreciation for the rule of law cannot be presumed. Most people lead their lives having little direct or intentional contact with the legal system and may even gauge their conduct so as to have none. But even though few of us would seek to be a party to a lawsuit or worse yet be accused of a crime, we know these legal forms exist. What we might not realize or appreciate is how much of our everyday lives are shaped by laws. Whether in the contracts we sign and the rights accompanying them, or in the rules and regulations protecting the safety of the food we eat, or in our daily contact with government, from our schools to city halls, all these acts have legal dimensions. We may not think of ourselves as lawmakers but we routinely vote in elections to select those who will make laws or enforce the rules already on the books. In many ways we exist in an atmosphere of laws, which like oxygen, we breathe in every day whether we realize it or not. This ability of law to shape our lives, yet be in the background of our daily activities, has both good and bad effects. It is

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12. *Id.*

13. About the World Justice Project, <http://worldjusticeproject.org/about/> (last visited Nov. 27, 2008).

14. See The World Justice Project, *supra* note 10.

good because the law is able to function unobtrusively and not paralyze our conduct. It can be bad in the way its transparency makes it hard for people to recognize or appreciate the significance of law. In the context of agriculture, few farmers, if asked, would list the legal system as a major contributor to agriculture's productivity. Yet, if these same people were asked to list the many ways the law shapes their lives or supports their farm businesses they would be surprised.

In reviewing the work of the Rule of Law Initiative to date, there has been no specific attention given to agricultural law or to recognizing how law shapes the food we eat, the success of farms, and the sustainability of our environment. On the one hand, this is disappointing especially given the significance of farming in the economies of most nations, but it is not entirely a surprise. As previously noted, the failure to recognize or appreciate how law shapes the health of agrarian systems and of the world's food supply is a common malady. But this failing is not insurmountable; instead, it serves as an opportunity for legal scholars and those who understand agriculture law to help others make this missing connection.

The reality is that in the current world debate about agriculture, on topics ranging from food prices to hunger to environmental sustainability, law has a front row seat. One need go no further than the daily paper to find a story illustrating how legal and policy issues are shaping the performance of farming systems. Perhaps the issue is land reform and the access of peasants to farmland. In the Ukraine, Russia, Poland and across Eastern Europe, the most powerful economic forces in rural areas are efforts to reconsolidate small holdings or convert former state farms into productive industrial farms, all driven by the lure of surging world demand for grain and higher prices.<sup>15</sup> While in India, national efforts to increase manufacturing to help employ the hundreds of millions who struggle on small farms faces strong farmer opposition if land is being converted from farming, as seen in the dispute over Tata's efforts to construct a new factory to

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15. See John W. Miller, *Bread Basket: In Ukraine, Tiny Plots of Farmland Spur Big Bet*, WALL ST. J., May 12, 2008, at A1 (discussing the efforts of a United Kingdom firm, Landkom International P.L.C., to use farm leases with owners of small holdings in Ukraine to consolidate and re-create large-scale industrial sized farms to take advantage of the growing world market and prices for grains and biofuels. Landkom claims to have leased over 165,000 acres from thousands of Ukrainian landowners); see also Andrew E. Kramer, *Russia's Lazy Collective Farms Are a Hot Capitalist Property*, N.Y. TIMES, Aug. 31, 2008, at A1 (discussing the growth of companies investing in assembling large tracts of Russian farmland and acquiring former state and collective farms to operate them as Western style factory farms using modern technology and inputs to increase yields and productivity); Elisabeth Rosenthal, *Old Ways, New Pain for Farms in Poland*, N.Y. TIMES, Apr. 4, 2008, at A6 (concerning the difficult adjustments facing small traditional Polish farms in complying with European Union rules on food sanitation and encouraging efficiency).

build the Nano, the \$2500 car designed for the masses.<sup>16</sup> Or perhaps the legal issue is the matter of gender equality and women's rights. Most of the world's farmers are women, but many toil in political and legal systems that fail to acknowledge either their contributions to the economy or their ability to own property.<sup>17</sup>

The point is that any effort to promote the rule of law on the international stage must recognize and integrate considerations of how the law impacts farming and agriculture. Failing to do so will exclude the majority of the world's citizens from the discussion and ignores the reality that agriculture is the single economic activity with the greatest and most widespread impact on the natural environment. Mankind will never be able to promote the goals of environmental protection and sustainable development – let alone address hunger and poverty – without recognizing the extent and impact of farming practices around the world. Whether the issue is destruction of the rainforest to graze cattle<sup>18</sup> or grow palm oil for biofuels,<sup>19</sup> the degradation of land from soil erosion and poor farming,<sup>20</sup> or

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16. Somini Sengupta, *India Grapples with How to Convert its Farmland into Factories*, N.Y. TIMES, Sept. 17, 2008, at A6 (concerning the ongoing dispute between small farmers, land owners, the Indian government, and Tata over the appropriation of over nine hundred acres of farmland for construction of a major new auto assembly plant to build the low-cost Tata Nano. Local farmers and small landowners are protesting the operation of the factory claiming they were not adequately compensated for the land taken for its use. In the larger Indian context, the amount of land involved is miniscule compared to the economic activity of the auto factory; but, for the poor uneducated rural farmers and peasants, the loss of land and lack of other farming opportunities has been a rallying cry.).

17. For scholarly discussions of the issue of land reform and gender issues, see generally H. Ray Liaw, Comment, *Women's Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights*, 17 PAC. RIM L. & POL'Y J. 237 (2008); Dustin Miller & Eyob Tekalign Tolina, *Land to the Tiller Redux: Unlocking Ethiopia's Land Potential*, 13 DRAKE J. AGRIC. L. 347 (2008); Geoffrey E. Roughton, Note, *Comprehensive Land Reform as a Vehicle for Change: An Analysis of the Operation and Implications of the Tanzanian Land Acts of 1999 and 2004*, 45 COLUM. J. TRANSNAT'L L. 551 (2007).

18. See Andrew Downie, *Brazil Seizes Livestock to Protect Rain Forest*, N.Y. TIMES, June 25, 2008, at C3 (concerning the unprecedented move by the Brazilian government to seize herds of cattle found illegally grazing on an ecological reserve in Para).

19. See Peter Gelling, *Forest Loss in Sumatra Becomes a Global Issue*, N.Y. TIMES, Dec. 6, 2007, at A14 (concerning the fears of increased production of palm oil in South Asian nations, like Malaysia and Indonesia, is leading to land degradation and destruction of rain forest); Elisabeth Rosenthal, *Once a Dream Fuel, Palm Oil may be an Eco-Nightmare*, N.Y. TIMES, Jan. 31, 2007, at C1 (noting the connection between the demand for increased palm oil production, EU biofuels subsidies, and rainforest destruction).

20. See, e.g., Sabrina Tavernise, *Old Farming Habits Leave Uzbekistan a Legacy of Salt*, N.Y. TIMES, June 15, 2008, at A6 (concerning the extensive environmental destruction associated with irrigation and the salinization of land, leading to the abandonment of farmland. The practices are having a serious impact on the levels of cotton production and the economic performance of the cotton dependant nation.).



the use of precious water resources for irrigation;<sup>21</sup> farming and agriculture are the critical links in these human activities. Similarly, if the world is serious about the goal of feeding the one billion citizens who live in poverty and who face hunger and food insecurity<sup>22</sup> – a commitment the world’s leaders reaffirmed in June 2008 in Rome at the United Nations’ emergency summit on the world food crisis<sup>23</sup> – then the economics and political realities of farming, both domestic and international, must be addressed. For all of these issues – access to land, gender equality, environmental sustainability, alleviating poverty, and addressing world hunger – the rule of law is an essential and fundamental element in shaping public and private responses. One challenge in harnessing the power of law to address these issues is to recognize how people’s perceptions of law can vary. Simply put, law can be encountered in two ways; either as tool for progress or as a weapon of oppression. A person’s experience with law will largely be a function of how a country’s legal system operates. If you are a small farmer and your only encounter with the law was when the government or a powerful interest used the cloak of law to drive you from the land, then law will not be seen as a benign force for good. If the law is used to prevent farmers from selling traditional farm-made foods under the guise of hygiene concerns, or if farmers are denied the right to save and replant seeds due to claims of intellectual property rights, then law may be seen as a weapon to exploit farmers and the land. But on the other hand, if law is used to protect farm tenants to be secure in their right to farm the land, if law works to give women the opportunity to own land and pass it to their children, and if law works to protect the integrity of the marketplace and insures farmers are paid for the crops and livestock they sell, then law is working as a tool for agricultural progress. The key to understanding the role law plays is recognizing how the content of the law and the control and operation

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21. See, e.g., David L. Stern, *Fragile Tajikistan Hopes Water Will Power its Ambitions*, N.Y. TIMES, Sept. 1, 2008, at A5 (concerning the use of abundant water resources to support an irrigation dependent cotton production sector amid competition for water from other uses).

22. See, e.g., Rick Hampson, *Ethiopia’s New Famine: ‘A Ticking Time Bomb’*, USA TODAY, Aug. 18, 2008, at A1 (examining the population growth in Ethiopia and the impact of higher food prices as food shortages are expanding the incidence of hunger and malnutrition); Carlotta Gall, *Hunger and Food Prices Push Afghanistan to Brink*, N.Y. TIMES, May 16, 2008, at A8 (concerning the difficulties faced in the war torn agrarian nation to produce the food needed, noting that six million of the nation’s thirty-two million people are now receiving food aid through the United Nations World Food Program).

23. See, e.g., Andrew Martin & Elisabeth Rosenthal, *Leaders Speak of Their Own Issues at a Conference Addressing Food Shortages*, N.Y. TIMES, June 5, 2008, at A6 (concerning the discussions at the United Nation’s emergency world conference on the global food shortages. Issues of biofuels policy, the relation to climate change, and the continuing challenge of feeding one billion underfed people were discussed, as were the claims for needed reform in Western farm subsidies.).

of legal systems determines its value and whom it serves. In the United States the rule of law provides both transparency and access to the lawmaking process, and it helps insure access to justice through the assistance of lawyers and the courts. It is these technologies of justice that make the rule of law so valuable to our political economy. It is time to consider how the rule of law can be articulated in an agricultural setting.

### III. IDENTIFYING THE TWELVE PRINCIPLES OF AGRARIAN JUSTICE

Over the course of thirty years writing and studying how law applies to farming and agriculture, it has become easier to trace the appearance of patterns and common goals in legal rules. My travels and teaching in over twenty nations around the world have broadened my perspective on the ways law is used and has shown me how farmers and agrarian societies are similar regardless of the climate, crop, language or political system involved. Farming is a land-based activity in which people till the soil, plant their crops, and tend their herds with the knowledge and optimism that the soil, sun, and rain will with time lead to the production of food and fiber. Whether it is the bucket of milk pulled each day, the dozen eggs collected each night, or the crop harvested each season; farming is based on a promise and an investment in the future. To thrive farmers need access to land and the seeds and technologies to make it productive, they need stable economic and political systems giving them the confidence today's work can become tomorrow's harvest, and they need functioning economic systems so money borrowed<sup>24</sup> and invested in their farms can become the harvests of income, profits, and wealth needed to support the progress of their families, their communities, and their nations. If these factors are in place, then the rest of society can reap the benefits of agriculture in terms of abundant, healthy, wholesome and affordable food, if other food and agriculture policies support healthy sustainable farming systems. If these factors are in place then businesses can thrive and natural resources can be conserved and stewarded for use by future generations as well. But if any of these factors don't exist, then the ability of farmers to thrive and of populations to be fed, is placed in jeopardy – and instability for families, communities, the environment, and even nations may grow.

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24. The existence of effective banking and credit for small farmers and rural residents has not been widely discussed in legal scholarship, but two recent publications address aspects of banking and microfinance in developing nations. See Dustin Miller, Note, *Climbing the Mountain: Providing a Vehicle for Banking Services to Kenya's Rural Farmers*, 19 GEO. INT'L ENVTL. L. REV. 783 (2007); Elin M. King, Comment, *Vietnam's Decree on Microfinance: A Flawed Attempt to Create an Enabling Legal Environment for Microfinance*, 17 PAC. RIM L. & POL'Y J. 187 (2008).

In thinking about the rule of law, as articulated by the ABA, and its application to farming and food, there appear to be at least twelve basic legal principles common to any farming economy. These twelve principles of agrarian justice can be used to evaluate how well the agriculture and food law or “agrarian law” systems of a nation function.

The twelve principles of agrarian law needed to promote the rule of law are:

1. Access to land – to thrive farming requires protection of property rights through stable and secure land tenure, making the legal rights to farm property widely available, transferrable, recorded, and protected.
2. Equality of treatment – property rights (and other laws, such as contracts) must not discriminate against individuals and their ability to protect their rights based on income, gender, age, caste, class, religion, political beliefs, or ethnicity.
3. Protection of farm tenants – the increasing separation of land ownership from operation makes protecting the rights of tenants (and similar relations) critical, such as notice of termination, security of tenancy, rights of first refusal if land is sold, and the ability to participate in public supports for agriculture and rural development.
4. Access to free markets for products raised on farms and in rural areas – the right to sell their products in open markets at fair prices determined by demand is essential for farmers, with products defined broadly to include food, fiber, energy, and related environmental and land based services.
5. Right to associate with others – to improve their economic situation and protect their interests, farmers must have the ability to join with others in cooperatives and producer associations, protected from discrimination, retaliation, and other unfair and anti-competitive practices by the business with which they are in commerce.
6. Freedom to contract and access to technology – farmers must have access to necessary inputs for farming and marketing, including equipment, services, technology, and production inputs such as seed, subject to legal forms of intellectual property.
7. Access to credit and capital at competitive interest rates – farming is capital intensive and needs access to credit and financial services to be productive and create wealth, but credit and debts must be subject to borrower protections such as truth in lending, disclosure, and fair debt enforcement respecting debtor’s rights.
8. Sustainable agriculture and environmental protection – to continue to function, agriculture depends on natural resources such as land, soil,

- and water, protected from degradation and conserved for use of future generations.
9. Food security – citizens need food security and access to nutrition including the right to adequate food to meet basic needs to avoid hunger and malnutrition.
  10. Access to healthy and safe food – to thrive, societies need access to safe food to minimize food borne illness and to healthy food to reduce the incidence of diet related illness and disease such as obesity and diabetes.
  11. Protection of farm and food workers – much of the labor in the food and agriculture system is provided by hired workers, often migrant or seasonal workers, all who deserve basic protections in the form of fair wages, benefits, safe work places, and the right to organize with others.
  12. Right of succession – for agriculture to continue across generations, farm families need security in ownership of land and other assets and protection of the right to plan for and carry out the transfer of property to others including family members.

The twelve principles were identified in part by reflecting on the operation of American law at the state and federal level. For each there exists a body of law, either statutory or case law, or both, that builds on and makes operational the underlying idea as it is reflected in the operation of America's agricultural and food system. The name and purpose of these laws are familiar to anyone involved in agriculture and they range from the Capper-Volsted Act designed to protect the right of farmers to form cooperatives,<sup>25</sup> to the Agricultural Fair Practices Act aimed at preventing discrimination and unfair practices by businesses dealing with farmers who exercise the right to organize.<sup>26</sup> The laws include the extensive range of federal farm programs encompassing commodity support programs, rural development initiatives, and environmental protections for soil and water conservation, the extensive body of federal law which was just renewed and refreshed with passage of the 2008 farm bill.<sup>27</sup> This law also contains the nation's commitment to food assistance and funds agricultural research and efforts to expand the production of renewable energy. Any lawyer who has worked with the financing of farming operations appreciates the importance of Article

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25. See Co-operative Marketing Associations (Capper-Volstead) Act, 7 U.S.C. §§ 291-292 (2000). The Capper-Volstead Act is considered to be the most important legal protection for farmer cooperatives in the United States.

26. Agricultural Fair Practices Act of 1967, 7 U.S.C. §§ 2301-2306 (2000).

27. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1664 (2008) (to be codified at 7 U.S.C. § 8701).

Nine of the Uniform Commercial Code and the role played by state laws governing the creation of mortgages and installment land contracts; laws which were often the subject of extensive reforms as an outgrowth of the farm financial crisis of the 1980's. The reality is American agriculture and our nation's food system are undergirded by an architecture of laws and regulations designed to provide for efficient economic transactions and protect the health and safety of the people, food, animals, and natural resources involved in agriculture. As people throughout the world work to address the many challenges facing the food and agriculture sector, there is much to be learned from the experiences and examples found in the United States and other nations for how law and the rule of law can help achieve social goals.

#### IV. OPPORTUNITIES TO EXPAND AGRARIAN LAW AND RULE OF LAW IDEALS

The legal profession has an opportunity and obligation to society to promote the efficient and effective use of the justice system to meet social and human needs. Lawyers do this everyday in their representation of the needs of clients and in their work as agents of justice. Law professors help promote this goal in their classes, scholarship, and service as they work to pass on the respect and understanding for law to future generations of lawyers, and as they work to help society understand the application and intricacies of the law. Professional organizations from the local level to the international stage also have critical roles to play in educating society about the law. The ABA's World Justice Project and the Rule of Law Initiative are prime examples of intentional actions to accept the responsibility for promoting the health and security of our legal institutions. As it relates to agricultural law and the opportunity to use the Rule of Law idea as a way to improve the public's understanding and appreciation for the role law plays in relation to farming and food, there are a number of actions we can consider. The following are ideas for how agricultural law can be consolidated into the work of the agricultural law community, including:

1. Connect the work of international and regional professional organizations, such as Union Mondial de'Agaristas Universitaires (World Union of Agricultural Law Professors) and the Comite European du Droit Rural (the European Agricultural Law Society);
2. Expand the work of national legal organizations such as the American Agricultural Law Association<sup>28</sup> and the Derecho Agraria de Argentina, and create linkages between them;

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28. See generally American Agricultural Law Association, <http://www.aglaw-assn.org/home.htm> (last visited Nov. 27, 2008).

3. Help create new national organizations of lawyers working in the area of food and agriculture, such as the opportunity which exists in India;<sup>29</sup>
4. Expand the work of existing bar associations such as state agricultural law committees which exist in Iowa, Kansas, Minnesota and Nebraska, and expand the efforts of the ABA and its various sections to address agricultural law topics;
5. Build awareness of the research and extension programs working to enhance the knowledge of agricultural law and make it accessible to the public, such as the National Center for Agricultural Law Research and Information<sup>30</sup> at the University of Arkansas and the Center for Agricultural Taxation and the Law at Iowa State University;
6. Promote agricultural law education programs, such as the work at the law schools at the University of Arkansas, Drake University, and Penn State-Dickinson in the United States; the Universities of Newcastle and Leeds in the United Kingdom; the longstanding program at the University of Nantes in France; and the many Italian programs such as those at Foggia and Pisa;
7. Expand opportunities for students and others to study agricultural law, with enhanced faculty exchanges and more international travel and internship opportunities for students;
8. Sponsor international conferences and workshops on agricultural law to draw academics, bar leaders, practitioners and international officials<sup>31</sup>; and
9. Integrate agricultural law issues within international organizations, such as the Consultative Group on International Agricultural Research, and centers, like International Food Policy Research Institute, with the Food and Agricultural Organization.

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29. I traveled to India in May 2007 as part of a U.S.D.A.-sponsored team for the Agricultural Knowledge Initiative that the United States has entered with the Indian government. In India, we took part in a workshop on the use of production contracts to promote Indian agriculture, and during the visit I met a number of Indian lawyers who were working on food and farming related issues. To date, there has been no effort to organize them into a professional group such as an Indian Agricultural Law Society.

30. *See generally* The University of Arkansas: The National Agricultural Law Center, <http://www.nationalaglawcenter.org/> (last visited Nov. 27, 2008).

31. In October 2007, the Drake University Agricultural Law Center hosted a two-day workshop on "The Role of Law in Promoting Sustainable Agriculture and Rural Economic Development: An International Perspective," which brought professors, students, and lawyers from the United States and twelve other countries to Des Moines, Iowa. The Center is planning an international workshop in the fall of 2009 to focus on Agricultural Law in the Americas and will examine the role of agricultural law in the new world. *See generally* Drake University Law School: Agricultural Law Center, <http://www.law.drake.edu/centers/agLaw> (last visited Nov. 27, 2008).

## V. CONCLUSION: THE WORLD NEEDS AGRARIAN LAW TO SUSTAIN US

The term sustainability has come into vogue recently as attention has increased on the impact of mankind's action on the fate and future of the world. This impact of man could be in the cataclysmic proportions of a nuclear terrorist event but it is more commonly experienced in the actions of a farmer struggling to eke out a crop from an eroding hillside. We give much time and worry – as no doubt we should – to preventing and eliminating the potential for cataclysmic events. But the everyday lives of people are shaped by what we eat, assuming we are able to do so, and the Earth's health is shaped by how our food is produced. This Article has explained how law must be recognized and utilized as a force to help the world address its most fundamental challenge of survival. Across the world the political life of nations and their citizens are being shaped by issues relating to food, land, and farming. In Cuba, the question is how the government can expand legal access by private farmers to land, a sharp break from its communist past, in order to expand food production to meet its citizens' needs.<sup>32</sup> In Zimbabwe, the issue is in some ways the reverse, as the nation struggles with hyper-inflation and food shortages, largely fueled by ill-planned land reform which seized land from successful, productive white farmers for redistribution to those with no ability or resources to farm it.<sup>33</sup> The seizure of land in violation of established property laws illustrates a breakdown of the rule of law. In China, the nation is struggling with a food safety crisis resulting from widespread and intentional contamination of the milk supply.<sup>34</sup> Fundamental to the crisis are the facts that the companies involved were in part government owned, the regulatory system did not function free of other political concerns such as maintaining “harmony” and preventing embarrassment before the summer Olympics, and the absence of an effective private legal system to discipline anti-social behavior.<sup>35</sup> The crisis serves to illuminate serious fault lines in the attempt by the Communist nation to develop a capitalist economy without the counterbalancing forces of a truly functioning legal system. As a final example consider Bolivia, which finds itself in the middle of an increasingly violent and uncertain political clash between forces aligned with President Morales, the first indigen-

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32. Marc Lacey, *Battered by Storms, Cuba Uses Ideological Zeal to Lift Spirits and Direct Anger*, N.Y. TIMES, Sept. 28, 2008, at A8 (noting that in response to recent hurricanes, Raul Castro's government has “sped up his long-planned overhaul of Cuba's agricultural system, saying he would dole out unused land to those who want to give farming a try.”).

33. See Celia W. Dugger, *Life in Zimbabwe: Wait for Useless Money, Then Scour for Food*, N.Y. TIMES, Oct. 2, 2008, at A1.

34. See Jim Yardley & David Barboza, *Despite Warnings, China's Regulators Failed to Stop Tainted Milk*, N.Y. TIMES, Sept. 27, 2008, at A1.

35. *Id.*

ous president, and those of the powerful landowners and other economic forces who are threatened by his plans to restore land and power to native people.<sup>36</sup> In all these stories, selected from countless others, there are three common elements which illustrate the theme of this Article. The stories involve food, they involve farmers and land, and they involve the actions of national governments as carried out through use of the legal system. How these nations are able to address the social turmoil and politic risks reflected in these controversies will in many ways be determined by how successfully they are able to use the “technologies of justice” to address the underlying human needs. Our ability to use the law to further civilization is the test and testament for the legal profession.

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36. See Simon Romero, *Fears of Turmoil Persist as Powerful President Reshapes Bitterly Divided Bolivia*, N.Y. TIMES, Sept. 28, 2008, at A12.