

INTRODUCTION

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The inaugural issue of the *Drake Journal of Agricultural Law* is a fitting occasion to assess the emerging role of agricultural law and the contributions of the field to the human family.¹ Certainly, any field of intellectual inquiry claiming jurisdiction over a portion of the great body of knowledge must make a contribution worthy of recognition on a continuing basis in order to grow and flourish. Unless a genuine contribution is made, a field of inquiry will ultimately wither and die.

TRAJECTORY OF AGRICULTURAL LAW

The relatively young field of agricultural law can claim formal recognition over less than a century even though examples of the effects of law on agricultural pursuits date from the beginning of recorded history. From the early years of the twentieth century, agricultural law has enjoyed steady increases in influence and recognition. Not until 1980, with the formation of the American Agricultural Law Association, did agricultural law advance to the point of undeniable visibility in the pantheon of disciplines. That step provided an organizational foundation for the growth and development of the field.

This inaugural issue of the *Drake Journal of Agricultural Law* marks yet another major milestone and provides a significant additional unifying force in the evolution of agricultural law.

CHANGING ROLE OF AGRICULTURAL LAW

In the United States and the other countries with a strong commitment to a market-oriented economy, the major feature of the economic system has been that resources are allocated and income is distributed in accordance with price signals. Recent years have seen a resurgence of interest in, and support of, the market economy in most of the industrialized countries of the world. Since the early part of this decade, even the countries of the former Eastern Bloc that had pursued central planning, some for as long as three-quarters of a century, began edging toward market forces to guide their economic activity.

In a price or market oriented economic system, law plays a critically important role. While many outside of the law had come to take the legal system for granted over the years, and indeed many had assumed that law was given datum, the shift in economic philosophy in Central and Eastern Europe and the former

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1. The Presidential Addresses delivered at the American Agricultural Law Association Annual Meetings in recent years provide a fascinating contrast of perspectives on the directions the Association might or should take as well as sundry admonitions to the members. For a particularly penetrating analysis and perspective, see Neil D. Hamilton, *Issues Shaping the Future*, Address Before the American Agricultural Law Association (Sept. 26 1992), in 19 WM. MITCHELL L. REV. 271 (1993).

Soviet Union provided a stark reminder that a market economy is heavily dependent upon a functioning and efficient legal system. Indeed, without an enabling legal structure, markets can scarcely function, and the economic system reverts to a fledgling state.

Agricultural law has contributed mightily to the efficient functioning of economic and political systems world wide. The emphasis on commercial law, organization of firms, debtor-creditor relations, and property law, to mention only a few areas of focus, has improved the level of functioning of economic systems. Additionally, the area of taxation has contributed to the efficient collection of revenues to maintain the necessary functions of government.

But as everyone knows, markets do not always operate in an acceptable manner. Various degrees of market failure (and societal unwillingness to accept the outcomes of market determinations) have characterized market economies since well before the days of Adam Smith. Whenever a market economy does not function acceptably, societies have tended to turn to law as a partial or total substitute for the market. As with zoning, for example, the market is left free to function within specified bounds. From the mid-twentieth century on, much of environmental law has fulfilled the law's role as a partial substitute for the market. Some might argue that, in certain instances, law has become a complete substitute for the market.

The law of nuisance (which is still a mainstay in dealing with odor problems), drainage, disposal of toxic wastes, and numerous other interventionist areas of law have been developed to deal with market failure or situations where market outcomes are unacceptable. Attempts to influence the structure of agriculture and limit land ownership have likewise been implemented, using law as a partial constraint on market functioning.

THE AGRICULTURAL SECTOR IN TRANSITION

As the *Drake Journal of Agricultural Law* commences publication, the agricultural sector is in a state of transition. Agriculture is not alone in being subjected to relentless economic pressures to reduce costs and achieve the highest level of efficiency. Banking, retailing, communications, entertainment, and manufacturing, to mention only a few of the more visible sectors, are all experiencing the forces leading to significant restructuring.

Efforts to achieve the lowest possible cost per unit of output place continuing pressure on farm businesses in order to expand to achieve economies of scale and to boost farm income. At the same time, processors and other agribusiness firms are pressured to move toward more efficient levels of operation. One consequence of the economy-wide pressures to boost revenues and control costs is the emergence of contract linkages between producers and processors.² Agricultural law is vitally involved in providing the insights and flexibility needed for firms to adapt and survive. No one can see the future with clarity, but all indications point to rapid expansion of contracting to assure the desired quantity and quality of product flows to processors. This development has expanded dramatically a traditional field in agricultural law.³

2. See, e.g., HAMILTON, NEIL D., *A FARMERS' LEGAL GUIDE TO PRODUCTION CONTRACTS* (1995).

3. See IOWA ATTORNEY GENERAL, *GRAIN PRODUCTION CHECKLIST* (January 1996); IOWA ATTORNEY GENERAL, *LIVESTOCK PRODUCTION CHECKLIST* (January 1996).

For agriculture, the transition is complicated and magnified by a shift away from reliance on governmental intervention in decision making, plus a shift toward greater reliance on the market. Although government's hand is receding from intervention in the sector, government will likely continue to play a role in long-term stabilization of the sector made necessary by the wide swings in production attributable to weather. Nonetheless, the subsectors subjected to governmental involvement will likely suffer income pressures and increased product price volatility.

Agriculture is also adjusting to rising public expectations with respect to air pollution, stream and groundwater pollution, and food safety. At the same time, the agricultural sector is midway through a decades-long effort to demolish gradually the trade barriers in farm products. If United States agriculture remains cost competitive worldwide, and the evidence points in that direction, United States agriculture should be a major supplier of food to the world in the coming decades.

A MAJOR CONCERN

A persistent and continuing concern in every country of the world, and to an even greater degree in the countries oriented toward a market economy, is how the economic system grows and adapts over time. It is indeed obvious that economies are not static constructs. Tastes and preferences change, incomes change, prices change, populations change, and of major importance to agriculture, weather changes.

One of the important strengths of market-based economies is that markets respond to these forces day by day, hour by hour, even minute by minute. Market responses are often immediate and do not require a huge bureaucratic force. The consumer is king in a market-oriented system, in that the consumer originates the signals that are transmitted quickly to producers, processors and others in the long chain from raw material to the finished product.

Where law serves as a partial or total substitute for the market, resource allocation and income distribution continue to respond to price signals within the domain in which the market is allowed to function. But a major problem is that no set of forces comparable to price signals provides the regenerative forces to maintain the legal system in adjustment. The process of legal change is typically much slower with the legal system evolving statutorily through court decisions and, over time, as an offshoot of the political process. As a consequence, the legal system tends to lag behind other changes.

One of the major ways the forces of change in the legal system are formulated and focused is through scholarly journals. The *Drake Journal of Agricultural Law* will almost certainly become a highly respected voice in the policy arena. As noted elsewhere, the responsibility of disciplinarians is to assure that the decision makers in society (judges, elected representatives, and governmental agencies) are fully aware of what is known in the various disciplines about a particular issue.⁴ An important avenue to achieving that result is through professional journals focusing on real world problems. A major task and a continuing burden on law and the other disciplines contributing to the growth and devel-

4. See Harl, *Agricultural Economics: Challenges to the Profession*, 65 AM. J. AGR. ECON. 845, 850 (1983).

opment of law is to improve the process by which law adapts to changing circumstances. Agricultural law has flourished as a field of emphasis, in large part, because it focuses on identifiable problems of the agricultural sector rather than devoting attention to the esoteric and the theoretical. It is the responsibility of disciplinarians from all areas claiming jurisdiction over some part of the great body of knowledge to communicate what is known and knowable to those commissioned by society to be the decision makers with respect to change in the legal system. It is the hope of many that this new journal will be a major contributor to improved functioning of the legal system world wide.

DIMENSIONS OF THE INTERVENTION TASK

Whenever and wherever law serves as a partial substitute for the market, in limiting the functioning of market forces, there are five discrete tasks that must necessarily be addressed. That is the case whether the issue is livestock odors, groundwater contamination, limitations on investment in agriculture, constraints on the use of certain pesticides or herbicides, limits on the use of feed additives, curbs on the use of growth stimulants, or imposition of standards for worker safety. In all instances, it is necessary, explicitly or implicitly, to deal with five dimensions of the specific problem. Those five dimensions are automatically addressed where the market is free to function. The five factors should be uppermost in the minds of those developing intervention solutions or attempting to modify or revise interventionist strategies.

The task is to address — (1) the scope of the intervention effort (in terms of delineating the outer bounds of the intervention); (2) the level (local, regional, state or national) at which intervention should be mounted; (3) the criteria or criterion to guide the intervention effort (the analog to profit maximization of a market-oriented system); (4) the time frame over which intervention is to be effective; and (5) the means (such as regulation, subsidies, taxes or other specific approach) by which the intervention effort is to be carried out. Particularly in the statutory realm, the major emphasis has been placed on the latter — the means by which intervention is carried out — with less regard to the other four dimensions of intervention.

The policy arena where the results of intervention have been most deficient has been in state and local legislative efforts. For example, water allocation under the permit system is not carried out under a clear set of criteria.⁵ The same criticism could be leveled at many of the statutes dealing with resource allocation.

For the truly complex issues facing the agricultural sector, or any sector, there is a need to develop an "architecture of public policy" to aid decision makers in formulating alternatives for intervention.⁶ The larger issues facing the agricultural sector can best be addressed by an integrated, coordinated, multi-disciplinary approach. To expect policy makers and their staffs to develop alternative approaches may be unrealistic. The systematic development of alternative approaches to intervention for review by policy makers is a worthy adjunct to the types of analyses long carried on in the policy arena.

5. E.g., Iowa Code §§ 455B.261-455B.281 (1995).

6. Harl, *The Architecture of Public Policy: The Crisis in Agriculture*, 34 KAN. L. REV. 425, 434-435 (1986).

THE CHALLENGE TO THE JOURNAL

For the editors of the *Drake Journal of Agricultural Law*, it is at once an exciting time to be launching a new journal and also a time of high expectations by potential users of the *Journal*. One is moved to suggest that the basic polestar be pursuit of ideas with the capacity to improve the condition of the human family everywhere. Such a lofty objective does not always assure economic success of a publishing venture, but it is likely to earn a special niche in the long history of efforts to improve the functioning of the legal system.

