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Juergensmeyer and Waldley: Agricultural Law

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BOOK REVIEW

AGRICULTURAL LAW. By Julian Conrad Juergensmeyer* and James Bryce Wadley.** New York: Little, Brown & Co. 1982. 2 Vols., pp. 1383. $140.00.

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The practice of agriculture today no longer resembles the Jeffersonian yeoman struggling behind a horsedrawn plow. Due largely to modern technological innovation, farming in the United States is a sophisticated business that demands professional management. Whereas the eighteenth century agrarian concerned himself primarily with the vicissitudes of the weather, his modern counterpart must also contend with the significant economic risks of conducting a rural enterprise in a complex urban society. Agriculture is no longer isolated geographically and economically from urban America. Gone are the days when the proverbial country lawyer could serve his clients adequately without having to keep abreast of the latest developments in the law relating to agriculture. That Professors Juergensmeyer and Wadley have filled two thick volumes with what they describe as merely the "core" of agricultural law is testimony both to the growing entanglement of farming with urban society and to the complexity of the task confronting lawyers advising farmer clients.

AGRICULTURAL LAW is the latest treatise on the subject, one that its authors attempt to set apart from predecessors such as the *magnum opus* with the same title by Professor Harl of Iowa State.[1] In their introductory section, "Agriculture and the Law in an Urban Age," the authors distinguish the traditional practice of "law and agriculture" from the emerging discipline of "agricultural law." They maintain the latter represents a new synthesis of common law doctrine, statutes, and administrative regulations, enlightened by an awarness of the special characteristics of agriculture as a social and economic institution. This enlightened synthesis implies that legal practitioners must resist the instinct to focus only on immediate economic problems facing their clients and instead must attempt to deal effectively with the broader social forces of urban America that create many agricultural problems.

The text of the Juergensmeyer and Wadley treatise is refreshingly well written and its choice of core material successfully builds upon the philo-

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1. N. HARL, AGRICULTURAL LAW (1980).

sophical foundation of agricultural law postulated by the authors. For example, the section on Agribusiness Law restates applicable principles and statutory provisions in a manner sympathetic to the objective of perpetuating family farm tenure in the face of mounting economic pressure to sell agricultural land for urban development. Similarly, the section on Civil Liability for Agricultural Operations discusses basic legal principles in relation to the growing problem of socio-economic conflict between farms and suburbs caused by the encroachment of urban development into rural areas where agricultural technology often produces offensive odors and noise.

Of the six sections of the treatise, only the section explaining Federal Agricultural Legislation and Regulation fails to consider the broader social causes of farmers' practical problems. The section on government regulation, for example, does not address why private causes of action are now inadequate as the exclusive means of regulating conduct with public consequences. This section does imply that regulation helps the farmer as much as it may hinder him, an enlightened recognition that legal practitioners should consider in advising their clients. It also provides a concise overview of agricultural credit programs and the economic regulations that render agriculture the American industry which, contrary to popular belief, is least subject to the forces of the free market.

Immediately following the introductory section of AGRICULTURAL LAW, the authors have placed their section on Land for Agricultural Use. This organization is deliberately calculated to stress the importance of land to agriculture. Its significance to Juergensmeyer and Wadley seems to stem not from the fact that soil is an essential medium in which to grow crops, but from the observation that a great deal of agricultural land in the United States is being irreversibly converted to nonagricultural uses.

Although the authors may be faulted for not devoting more attention to the legal implications of soil erosion, a problem faced by nearly all farmers, the emphasis they place upon the preservation of farmland in agricultural use is truly praiseworthy. Of all the social forces now pressuring agriculture as an industry, none has potential to work greater harm, both to individual farmers and to the nation at large, than does the continuing annual loss of some three million acres of agricultural land to urban development and other nonfarm uses.[2]

The chapter on agricultural land preservation is a fairly detailed catalogue and critique of legal techniques used by state and local governments to achieve this objective. The authors discuss various methods of preservation, ranging from zoning, the most popular technique and one to which the authors devote the most attention, to a largely untested concept, purchase-leaseback arrangements. A significant omission from the list of such techniques is the purchase of development rights. By this method, a state or locality acquires a negative easement on farmland which restricts its use to agriculture. In return for the negative easement, the farmer is paid the difference between the fair market

2. U.S. DEP'T OF AGRIC. & COUNCIL ON ENVTL. QUALITY, NATIONAL AGRICULTURAL LANDS STUDY, FINAL REPORT 36 (1981).

value of the property and its value as an agricultural production resource.[3] The purchase of development rights is becoming increasingly popular. Further innovation in the way in which purchases are made, for example, through tax relief in lieu of, or as a supplement to, cash consideration, promises to reduce its cost and to expand its utility.[4]

Another shortcoming of this chapter is its failure to explain the role that the federal government plays in promoting the conversion of farmland to nonagricultural uses. An authoritative study by the United States Department of Agriculture and the Council on Environmental Quality, the National Agricultural Lands Study, found that at least ninety federal programs subsidize or directly result in the development of agricultural land, often in direct conflict with state and local efforts to preserve this vital resource.[5] Farmers throughout the nation are learning that this federal influence can cripple or terminate their operations, for example, when an interstate highway takes or cuts through a farm.[6] Although the need for an effective legal defense of farmers' interests under such circumstances has never been greater, AGRICULTURAL LAW provides almost no guidance to the practitioner in this regard. Conspicuously absent from the treatise is a discussion of the Farmland Protection Policy Act, passed by Congress in December 1981 based on the recommendations of the National Agricultural Lands Study.[7] The Act is the first explicit statement of federal policy favoring agricultural land preservation.

The chapter on agricultural land could have been improved had the authors

3. The purchase of development rights (PDR) approach to agricultural land preservation has been implemented successfully in six states and at least two counties. When used in conjunction with regulatory techniques, PDRs offer farmers the opportunity to obtain "just compensation" for restrictions placed on the use of their property. States currently utilizing PDRs to preserve agricultural land are: Massachusetts, New Hampshire, Rhode Island, Connecticut, New Jersey, and Maryland. In addition, King County (Seattle), Washington, and Suffolk County (Long Island), New York, have adopted PDR programs. *See id.*; AN INVENTORY OF STATE AND LOCAL PROGRAMS TO PROTECT FARMLAND *passim*.

4. Although the cost to the public treasury of a PDR program may seem relatively high, significant financial leverage is created by its use in conjunction with other legal tools. For example, Maryland has purchased rights on only about 15 thousand acres of farmland, but the existence of this program, offering the prospect of compensation to farmers, has served politically to justify county agricultural zoning that now protects some 800 thousand acres. *See* FARMLAND PRESERVATION INSTITUTE, INC., 3 *Farmland Preservation Survey* No. 1, at 7 (1982).

5. NATIONAL AGRICULTURAL LANDS STUDY, *supra* note 2, at 48.

6. *See, e.g.*, "Farmers Fight Highway," *Farmland: The Newsletter of the American Farmland Trust*, Vol. 2, No. 3 (May 1982).

7. Agriculture and Food Act, Pub. L. No. 97-98, tit. XV, subtit. I, 95 Stat. 1213, 1341-47 (1981). The purpose of the statute is "to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland." *Id.* § 1536(b), 95 Stat. at 1341. Although the statute provides that federal agencies must follow guidelines promulgated by USDA to prevent farmland conversion, the Act does not authorize enforcement through private litigation. *Id.* § 1541, 95 Stat. 1342-43. The statute is nevertheless a useful tool for the practitioner in litigation brought on independent grounds, representing an expression of a public policy commitment to the objective of farmland preservation in conjunction with which other federal laws arguably must be construed.

drawn the appropriate and important connection between the conversion of farmland to nonagricultural uses and its influence on the ability of farmers to employ sophisticated agricultural technology without undue risk of liability. As noted earlier, when residential development encroaches into rural areas, conflict between farm operations and suburban sensibilities arises. The odor of manure, the noise of farm machinery, the drift of agricultural chemical sprays, and other byproducts of modern farming have the potential to annoy and injure neighboring residents. Although nonfarmers sometimes retaliate by vandalizing farm equipment or by helping themselves to part of a farmer's crop, nuisance litigation is becoming a frequent outlet for the social tension created by the juxtaposition of farms and suburbs.[8]

Within the past three years, thirty-five states have enacted "right to farm" laws in an attempt to insulate farmers from liability by, in effect, restoring the largely discredited defense of coming to the nuisance.[9] These statutes, however, do not address the underlying cause of the farmer's problems. Such legislation attacks only the symptom, land use conflict, rather than the disease of ill-advised nonagricultural development of the countryside. What these laws and the authors of the treatise fail to recognize is that the often-heralded right to farm is competing with, and in the absence of substantive measures to manage urban development patterns, is being defeated by, the farmer's claim to a "right *not* to farm" — the right to sell land, regardless of its productivity or location, at the highest price to a developer.

The very essence of agricultural land preservation as a means of protecting farmers who wish to stay in business, without unduly burdening farmers who want to get out, is an effort to provide the retiring landowner with a financially realistic alternative to the sale of his property out of agricultural use. Juergensmeyer and Wadley discuss the role that private land trusts can play in preserving agricultural land by offering farmers such an alternative, noting in particular the activities of the American Farmland Trust (AFT), a nonprofit charitable organization. Capitalizing on the experience of predecessors such as the Nature Conservancy, which has preserved two million acres of ecologically critical land, AFT uses market-oriented techniques to acquire interests in prime agricultural land for the purpose of keeping it in farming.[10]

As a private-sector institution, a land trust can act quickly and with great flexibility, whereas governments often cannot, to purchase or otherwise obtain title to farmland that is in jeopardy of being sold for nonagricultural use, and the conversion of which could result in conflict with surrounding farms. After an agricultural conservation easement is placed on a property, reducing its

8. *See* E. THOMPSON, *Case Studies in Suburban-Agricultural Land Use Conflict*, 2 ZONING AND PLANNING LAW HANDBOOK 297 (1982).

9. *See* E. THOMPSON, *Right to Farm Laws Examined*, 1 ZONING AND PLANNING LAW HANDBOOK 363 (1981).

10. *See* AMERICAN FARMLAND TRUST, 1981 ANNUAL REPORT (1981). Another connection that the authors of AGRICULTURAL LAW have missed is represented by the use of charitable donations of fee and less than fee interests in farmland to agricultural land preservation organizations such as AFT as a tax-saving device in farm business and estate planning. In this regard, see 1 FARMLAND FACTS: THE TAX BENEFITS OF CONTRIBUTING FARMLAND AND FARMLAND EASEMENTS (1981).

market value, the trust reconveys the farm to a qualified farmer, often a young person who otherwise could not afford to enter the business. Because they effectively supplement governmental programs aimed at preserving agricultural land and protecting farming enterprise as a going concern, such private sector initiatives are worthy of note by practitioners of agricultural law. The treatment of private land trusts in AGRICULTURAL LAW and emphasis on land preservation not found in other treatises are indicative of the innovative contribution that this treatise should make to an increasingly important legal discipline.

Articles in the Next Issue . . .

The Strategy of Tax Reform: A Tale of Three Loopholes

The Accumulated Earnings Tax: The Relationship Between Earnings and Profits and Accumulated Taxable Income in a Redemption Transaction

Conforming Section 2039 to the Goals of Estate Tax

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