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BOOK REVIEW

AGRICULTURAL LAW. By Julian Juergensmeyer and James Bryce Wadley. Boston: Little, Brown & Company, pp., 1982. \$140.

*Neil D. Hamilton**

The last ten years has brought about a significant development for the nation's legal community, particularly those individuals practicing in the nation's rural and agricultural areas, for during this period a new breed of law has sprouted and grown to childhood in an attempt to focus study and attention on the legal problems associated with the production, marketing, and use of agricultural products. While there has always been the business of agriculture and the practice of law as applied thereto, it is only within this recent period that there has been recognition of the existence of a body of "agricultural law," a special blend of law that focuses on the unique nature of agriculture and the law and regulations that have been developed by courts, state legislatures, and Congress to apply to it. In large part, this recognition of agricultural law has been a form of self-declaration by those individuals, whether practitioners, academics, or government attorneys, who discovered that they were dealing with a distinct and significant area of the law that was not recognized as such by the bar, law schools, and the legal community. The growth of the new field of agricultural law has been denoted by a number of developments which address these past inadequacies, including the increasing number of law schools offering classes in agricultural law, the formation of a national organization for those who view themselves as agricultural lawyers, the sponsoring of numerous seminars on agricultural law topics, and, most importantly, the publication of a growing body of scholarly legal materials, comprised of articles, casebooks, and treatises that identify, present, analyze, and dissect the law as relates it to agriculture. The development of legal scholarship and writing is significant because it is this component which will move the field of agricultural law towards maturity by describing and defining the scope and content of agricultural law.

The most recent addition to the growing body of agricultural law is an ambitious two volume treatise entitled *Agricultural Law*, written by Professors Julian Juergensmeyer and James Wadley. The publication of this work is an important addition to the basic core library of materials that define agricultural law, a library that con-

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tains, among other works, two previous treatises: *Agricultural Law*,¹ Professor Harl's fifteen volume seminal work, and the two volume *Agricultural Law*,² edited by Professor Davidson. Although these three works each share the same name, each is as different from the others as are children in a family, and like those children, each makes its own important contribution to the body of agricultural law, albeit in different ways.

The Juergensmeyer and Wadley text is essentially an attempt to identify in a thorough manner the major subjects encompassed by the term "agricultural law", and to accumulate, analyze, and present the current status of the law in those areas in a concise and useable work. Obviously, this is an ambitious task. The treatise falls far short of the publisher's advertising claims, but it still represents an important addition to the body of agricultural law.

In the introduction to the work, the authors disclose that their view of "agricultural law" entails going

beyond knowing merely the bits and pieces of legislation, administrative decisions and judicial decisions relating to farm operations. Instead, there is a need to recognize agricultural law as a separate and distinct area of the law in order to encourage and facilitate the concentration and synthesis of those parts of law relating to agriculture.³

In support of this theory, the authors observe that the current status of agricultural law is roughly equivalent to that of environmental law in the early 1970s. While both these areas of law cut across a number of traditional areas of law, there is also a unique component to the legal problems. Just as the experience of the '70s in the environmental area showed that there was a need to develop a separate legal specialty, the authors feel that agricultural law is at the point today where it needs the development of the special legal component. This apparently is why the authors undertook their project; *i.e.*, in order to contribute to the development.

The treatise is organized into five main components in an attempt to focus on what the authors see as the major areas of agricultural law. The respective parts are: "Agriculture and the Law in an Urban Age," "Land for Agricultural Use," "Federal Agricultural Legislation and Regulations," "Civil Liability for Agricultural Operations," and "Agribusiness Law." In addition, the book contains a lengthy section of sample forms, the inclusion of which is of dubious value.

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

2. *AGRICULTURAL LAW* (J. Davidson ed. 1981 & Supp. 1982).

3. 1 J. JUERGENSMEYER & J. WADLEY, *AGRICULTURAL LAW* § 1.1, p. 4 (1982).

The authors selected these five areas for concentration because they view them as the "core" of agricultural law. They wrote in the introduction:

It is impossible to cover in two volumes all rules, regulations, statutes and common law principles relevant to agricultural operations. Such comprehensive coverage is also beyond the purview of this treatise, since its purpose is not to cover all law relevant to agriculture but to concentrate on those areas destined to form the core of "agricultural law."⁴

This is a noble sentiment and certainly a practical one if the intent was to hold the work to a manageable two volume length. But as the scope of the coverage, particularly the multitude of complex subjects contained in the part on agribusiness law demonstrates, it is nearly impossible to provide thorough, detailed coverage of "agricultural law" that is useful to practitioners, other than as a general introduction, and still limit the length of the work as was attempted here. The treatise suffers throughout from a case of "biting off more than it can chew." This is not to say that the coverage presented is not for the most part accurate or of value, but the coverage seldom goes beyond being a general reporting and summarization of the material and is not the type of informed analysis or insight that would be useful to a practitioner. It is one thing to summarize the major provisions of the Internal Revenue Code or the Uniform Commercial Code as they apply to agriculture; it is an entirely different thing to analyze how those provisions apply in individual examples and to educate practitioners as to how they can understand those laws to maximize their clients' income and minimize their clients' legal difficulties.

This failing in terms of the scope of coverage and the level of analysis in part may stem from the fact the treatise seems to suffer from an ill-defined purpose. Nowhere, other than in the short quotation reproduced above, do the authors explain why the book was written, what purpose it was designed to fill, or even how or why a reader would make use of it. Certainly, an educated reader can attempt to answer some of these questions without assistance from the author, but such an exercise would have been valuable for several reasons. First, it would have assisted those considering purchasing the not inexpensive work. If the book is for libraries, it is a valuable resource, but if it is for the general rural practitioner, there are real questions concerning organization, ability to update the work, and level of analysis that should be closely considered. Second, such a statement of purpose would have been of benefit to the work, if for no other

4. *Id.* at § 1.3, p. 8.

reason than to act as a polestar to the authors and their assistants to keep them on track in organizing their writing.

Failing to find a definition of purpose or intent, one can attempt to construct one by comparing and contrasting the work to the two other treatises that share its name, the Harl and Davidson treatises. If the work is an attempt to present a complete picture of agricultural law, the set falls far short as compared to Harl. Although the Harl treatise suffers from being very lengthy, it is the most thorough and useful cataloging of the myriad subjects encompassed in agricultural law, and it is supported with extensive case and statutory citations, examples, and reprinting of original source material, as well as insightful analysis. But, clearly and in all fairness, the authors' goal here, if not the publisher's, was more circumspect, as they note, and was not to create another Harl. On the other hand, although the work is much shorter than Harl, the coverage of this work is much broader than Davidson. The Davidson set is a sharply focused work, containing detailed discussion of 11 major areas of agricultural law, most relating to some form of federal regulations, *e.g.*, commodity trading and the Packers and Stockyards Administration.⁵ The effect of this focus is that the Davidson work is available only if a subject covered in the select group.

As a result of these comparisons, it appears that the Juergensmeyer and Wadley book rests somewhere between its namesakes—broader in coverage but less detailed than Davidson, but less detailed and annotated and thus of less utility to a practitioner than the Harl set. It stakes out a middle ground. This observation should not be taken as a criticism, for this placement may be exactly what the authors intended for the work. However, if one considers the claims of the publisher in the material being used to promote this set, the observation can fairly be taken the form of a criticism. The advertisements for *Agricultural law* claim, that

No longer will you be forced to wade through unwieldy treatises or be disappointed by the lack of coverage available on Agricultural Law. In just *two* volumes, Juergensmeyer and Wadley give you everything you need to function effectively within the scope of agricultural legislation and regulation.

5. The subjects covered in the Davidson treatise are price and income adjustment programs, federal marketing order programs, the Packers and Stockyards Act regulatory program, the Perishable Agricultural Commodities Act regulatory program, commodity futures contracts, regulation of agricultural employment, restrictions on corporate and alien ownership and operation of farms, agricultural water pollution control law, federal pesticide regulatory law, the cooperative farm credit system, and the Farmers Home Administration.

Unfortunately, this claim as to the value of the coverage is not substantiated by reading the materials, and the implicit comparisons with other works are inaccurate.

But it may be unfair to burden the authors with the sins of their publisher, for without a doubt a great deal of work and effort went into the writing of this set. Some of the chapters, especially those concerning topics with which the authors have long been identified are very well written. For example, Chapter 4, "Protection and Preservation of Agricultural Lands," is a well written, thorough examination of the various regulatory tools available to governments concerned with preserving the quantity of agricultural land. Topics that are considered in this chapter include the various methods of agricultural zoning, agricultural districts, conservation easements, transfer of development rights, the public acquisition of interests in agricultural land, and the constitutional issues raised by these programs. Several chapters in Part IV, dealing with civil liability for agricultural operations, for instance, Chapter 26, "Liability for Recreational Farm Use," Chapter 27, "Liability for Farm Chemicals," and Chapter 29, "Liability for Farm Animals," provide very good summaries of the law in this area. But, just as the treatise has its high points, it also has its low points. Several of the weaknesses of the work have been noted above: the difficulty in covering a multitude of complex subjects in limited space, the level of analysis, and an uncertainty of purpose. The best way to illustrate these deficiencies and their effect on the work is through a critique of individual areas of coverage selected as being representative examples of the material in the treatise.

Chapter 25 discusses the doctrine of nuisance and the relationship of the law of nuisance to agricultural operations. Most of the chapter consists of a general discussion of the common law of nuisance, focusing on such points as the distinction between public nuisance and private nuisance and nuisances that are *per se* or *per accidens*. The discussion of nuisance in the agricultural context is general, focusing mostly on a discussion of animal feedlots and related nuisance problems. The discussion is a good summary of the material, although the frequent citation to unreported state district court cases is of limited value. Surprisingly and indeed unfortunately, in this chapter the authors chose to ignore, with the exception of one footnote,⁶ what is perhaps the most significant development in terms of agricultural nuisance law, that is, the enactment of "right to farm" laws that restrict the application of the doctrine of nuisance to agricultural operations. Since the late 1970's, forty-two states have adopted some

6. J. JUERGENSMEYER & J. WADLEY, *supra* note 3, § 24.6.3 at 23 n.9.

form of "right to farm" laws.⁷ Most of these statutes provide that if an agricultural operation was in existence and conducted in a reasonable manner more than one year before a change in the local conditions which give rise to a claim of nuisance, the agricultural operation can not be found to be a nuisance. While the laws bear some similarity, the various statutes provide a rich diversity of language and approaches to the problem of the encroachment of nonagricultural uses on farming operations and raise a number of significant, but for the most part unanswered, legal questions. In light of the unique nature of these laws, their prevalence, and the many important legal questions which they raise, it is difficult to understand why this important development in nuisance law was not discussed in the chapter on agricultural nuisance. This is especially puzzling because these statutes represent the "agricultural law" component of what is otherwise traditional nuisance law.

Chapter 32 is a discussion of certain of the main areas of law relating to agricultural cooperatives. As the authors note, agricultural cooperatives are one of the most important elements of the agricultural community in this nation. There are a number of significant legal issues concerning the formation and operation of agricultural cooperatives. In fact, the topic of agricultural cooperative law has been the subject of courses developed at several law schools in the midwest.⁸ In this chapter, the authors focus a great deal of discussion on the issue of antitrust law as applied to cooperatives. Generally, the discussion is accurate and valuable, although it does not include a number of more recent cases that provide further guidance on this topic. However, the coverage of Chapter 32 is of only limited value to a practitioner. While antitrust law may be one of the more interesting components of agricultural cooperative law, it is relatively infrequent that a practitioner would be faced with an antitrust issue. On the other hand, there are a number of other cooperative-related legal questions that a practitioner is much more likely to face, for instance, questions of equity redemption (how a member can go about obtaining from the cooperative the capital that was retained during his participation in the cooperative), questions of director liability for possible violations of duties owed to the cooperative or to members, and questions of the formation and financing of cooperatives through such devices as sale of stock and creation of revolving financing plans. Surprisingly, the chapter fails to discuss any of these three important

7. See 13 N. HARL, *supra* note 1, § 124 ("Right to Farm Laws"; reserved for later publication); see also Grossman & Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 WIS. L. REV. 1 (1983).

8. The University of Arkansas School of Law has offered such a class since 1981, and Drake University has offered the class since 1982.

cooperative issues. The failure to discuss or even mention the subject of equity redemption is especially troubling, since this topic is one of the more serious that face cooperatives in terms of perserving sound member relations and is an area in which there has been a fair amount of judicial activity.⁹ In order for this chapter to have been anywhere near complete, these subjects should have been addressed. However, this lack of coverage is not the only problem with Chapter 32. A significant portion of the chapter is devoted to the tax treatment of agricultural cooperatives. While this coverage is accurate, the coverage is disproportionate in that a great amount of space is devoted to a discussion of tax treatment under I.R.C. Section 521 ("exempt" tax status for cooperatives), while very little coverage is devoted to cooperative tax treatment under Subchapter T. Subchapter T is the more important income tax provision of the two. It applies to all cooperatives while section 521 is of limited applicability. In fact, in recent years there has been a significant trend of cooperatives moving away from Section 521 status. In addition to other weaknesses, the chapter also neglects to discuss the issue of the application of the federal securities laws to cooperative financing instruments. In fact, there is a serious inaccuracy in Chapter 32; a footnote implies that agricultural cooperative are entirely exempt from the federal securities laws.¹⁰ While certain agricultural cooperatives and certain cooperative instruments may be exempt from the federal securities laws, the question of exactly which cooperatives and what types of financing may be subject to securities laws is a very serious question facing cooperative law practitioners¹¹ and may well be a subject of further legislation and litigation in years to come, particularly as the financial requirements of cooperatives force them to go beyond traditional sources of financing.

One final point concerning the coverage in Chapter 32 is the failure to discuss the state statutes under which cooperatives generally are organized. While the chapter refers to the fact that cooperatives often are incorporated, there is only one citation to a state cooperative statute. Yet, the vast majority of cooperatives are formed under special legislation enacted by the states that is designed to provide for the incorporation of cooperatives. In fact, the United States Depart-

9. See, e.g., *Lake Region Packing Ass'n v. Furze*, 327 So. 2d 212 (Fla. 1976); *Claassen v. Farmers Grain Coop.*, 208 Kan. 129, 490 376 (1971); *Evanenko v. Farmers Union Elevator*, 191 N.W.2d 258 (N.D. 1971).

10. 2 J. JUERGENSMEYER & J. WADLEY, *supra* note 3, § 32.6 at 212 n.2.

11. Centner, *Retained Equities of Agricultural Cooperatives and the Federal Securities Acts*, 31 U. KAN. L. REV. 245 (1983). This article was prepared in partial fulfillment of the author's degree requirements for a Master of Law in Agricultural Law from the University of Arkansas, Fayetteville.

ment of Agriculture (USDA) recently has completed a major research effort entitled, "State Incorporation Statutes for Farmers Cooperatives," which discovered that every state has at least one statute which farmers may use to form a cooperative and that in total, over 85 different statutes exist which can be classified as state cooperative incorporation statutes.¹² Unfortunately, Chapter 32 does not include any discussion of these statutes, with the exception of one reference to the Kansas law.¹³

The subject of agricultural cooperatives is clearly within the core of "agricultural law." In fact, the area of cooperative law is one of the essential elements of agricultural law practice. For *Agricultural Law* to have successfully carried out its goal of providing important assistance to the agricultural law practitioner, the coverage of cooperative law should have been a great deal broader in terms of coverage and a great deal more detailed in terms of the depth of that coverage than what appears in the work.

Chapter 37, "International Trade and Agricultural Commodities," is a good example of the sketchy coverage and uncertainty of purpose that plagues much of the treatise. After introducing the fact that the export of agricultural products has come to be a very significant component of the United States agricultural economy, the authors state that the purpose of the chapter "is not discuss . . . political, social, economic, or climatic problems but to "examine the current legal and administrative context in which American agricultural exports take place."¹⁴ However, the coverage of the chapter is brief and is limited to the discussion of only a small number of subjects which in no way present a thorough coverage of the law of international agricultural transactions. The topics that are presented include a discussion of the Food for Peace program, a brief description of the General Agreement on Tariffs and Trade, the Tokyo Round of the Multilateral Trade Negotiations and their relation to agriculture, a summary of the Export Administration Act of 1979, a reference to section 22 of the Agricultural Adjustment Act of 1933 and the Sugar Act of 1948, and a short discussion of the involvement of cooperatives in agricultural trade. While interesting, the discussion of these topics does not provide the thorough presentation of the mechanics of exporting domestic agricultural products that the authors' introductory statements would lead one to expect. In order to accomplish that, the

12. J. BAARDA, STATE INCORPORATION STATUTES FOR FARMER COOPERATIVES, (U.S. Dep't of Agriculture, Agricultural Cooperative Service, Cooperative Information Report) 30 (1982).

13. 2 J. JUERGENSMEYER & J. WADLEY, *supra* note 3, § 32.7. at 215 n.1.

14. 2 J. JUERGENSMEYER & J. WADLEY, *supra* note 3, § 37.1 at 416.

authors should have more thoroughly identified how agricultural products come to be exported, with emphasis on factors such as market development, financing export sales, and transportation; focused on the different government programs that effect those sales, such as the use of bilateral trade agreements; and identified any aspects of private commercial law of particular significance to agricultural trade, for instance, the use of letters of credit and the different types of shipping terms. The chapter should have included a discussion of a number of additional topics including: the organization and function of the Foreign Agricultural Service (FAS) of the USDA, the FAS's market development program for United States cooperative groups, the use of bilateral trade agreements to control agricultural sales, the current long term grain agreement between the United States and the Soviet Union, the operation of the Commodity Credit Corporation and its various export financing programs, grain export reporting requirements, the Bank for Cooperatives export financing program, the use of cooperative pooling arrangements in exporting, the organization and function of the Special Trade Representatives Office (STR), the relation of section 301 of the 1974 Trade Act to agricultural trade disputes, and the use of letters of credit in agricultural trade. Of course, including these various topics would have increased the length of the chapter considerably but, without such inclusion, the coverage is incomplete and of very modest value to a reader hoping to use the treatise to understand the legal context of exporting agricultural products.

This observation, like the others above, is not so much a criticism of what is contained in the treatise as it is a recognition of the limitations of that coverage. The treatise contains a great deal of accurate, useful information. It represents the product of long hours of diligent work. This cannot be denied, and on this basis, it is an important addition to the field of agricultural law. Unfortunately, Chapter 37 is not the only example of the limitations in the thoroughness of the treatise. The problem of the scope of coverage is implicit in any attempt to hold a work of this type to a manageable size. The authors did not intend to reinvent the wheel in *Agricultural Law*, but by venturing into so many complex legal areas that cannot be succinctly captured and presented, they demonstrate that the body of agricultural law is not a small, distinct study, but instead is a section-based legal analysis that requires extensive exposition to be accurately and completely, and thereby usefully, presented. In this work, the authors have only completed part of the task, that of identifying the areas of law most important to agriculture. Unfortunately, the coverage of these areas seldom goes beyond introductory reporting and summarizing of the law, rather than a thorough attempt to organize, analyze, dissect, and then present in a format useable to the practitioner what

it is about agricultural law that they should know and need to know to assist their clients. The Juergensmeyer and Wadley treatise is a significant and valuable work for the development of agricultural law, and it marks an important addition to the core library of that study. The authors are to be commended for undertaking a work of this magnitude. However, in terms of critical analysis or utility to the practitioner, the book falls far short of the advertising claims of the publisher that it is "destined to become the standard reference." That title, if it can be granted at all, belongs more appropriately to the Harl treatise.