



1992

The American Agricultural Law Association: 1991 and Beyond

Margaret Rosso Grossmean

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Grossmean, Margaret Rosso (1992) "The American Agricultural Law Association: 1991 and Beyond," *North Dakota Law Review*. Vol. 68 : No. 2 , Article 2.

Available at: <https://commons.und.edu/ndlr/vol68/iss2/2>

This Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

THE AMERICAN AGRICULTURAL LAW ASSOCIATION: 1991 AND BEYOND*

MARGARET ROSSO GROSSMAN**

Nearly eleven years ago at a December 1980 organizational meeting in Minneapolis, Minnesota, sixty or so charter members voted to create the American Agricultural Law Association. Most of those charter members have remained active members. Many others have joined AALA in the ensuing years, bringing the 1991 membership roster to nearly 900. Perhaps others still will decide to become members as a result of the Twelfth Annual Meeting held in November 1991 in Atlanta, Georgia.

On a personal level, I measure the life of our still-young Association in connection with the life of my younger son, who was born just two months after that meeting in Minnesota. He's almost eleven now, and nearly as tall as I am. Like the Association, he is beginning to develop a life of his own and to respond to more significant challenges—with a lot of volunteer guidance from his parents and other adults.

In the past eleven years, the American Agricultural Law Association, too, has grown from its small beginnings to a strong professional organization guided by members who volunteer to serve. Much of our strength has come from the commitment of our members, and especially from those who have assumed leadership roles in the Association.

It has become traditional for the President (now Past-President) to reflect briefly at a conference luncheon about AALA. For example, Professor Neil E. Harl's often-cited presidential address announced the place of agricultural law in the intellectual firmament.¹ Professor David A. Myers examined the role of lawyers as lawmakers in American society, with a special focus on agricultural law and the role of our professional organization.² Attorney James Dean examined the state of our Association and challenged us to

* This article is adapted from the Presidential address, delivered at the Twelfth Annual Meeting and Educational Conference, American Agricultural Law Association, Atlanta, Georgia, Nov. 2, 1991.

** Professor, Agricultural Law, Department of Agricultural Economics, University of Illinois at Urbana-Champaign. B. Mus., University of Illinois, 1969; A.M., Stanford University, 1970; Ph.D., University of Illinois, 1977; J.D., University of Illinois, 1979.

1. Neil E. Harl, *Agricultural Law: A Place in the Intellectual Firmament*, 3 AGRIC. L.J. 537 (1982).

2. David A. Myers, *Agricultural Lawyers, Agricultural Lawmaking*, 38 ALA. L. REV. 625 (1987).

strengthen the organizational structure of AALA in the future.³ And others, too, shared equally thoughtful remarks.⁴

This brief reflection focuses on the Association's contributions to its members and to others in the agricultural and legal communities. In addition, it suggests some challenges for us as an Association and as individuals in the future, particularly in the international arena.

For a number of years, our Association has directed its efforts in part toward establishing a sound fiscal base and a stable organization. We are not a rich organization, but as our auditors have indicated, our financial position is relatively sound. Moreover, with our business offices located at the University of Arkansas School of Law, and especially with the competent work of our Executive Director, William P. Babione, AALA is now operating with continuity and stability.

In recent years, the Board of Directors has emphasized service to our membership. Our members—the hundreds of attorneys, professors, government officials, accountants, bankers, students, and others who support AALA with their time and money—also deserve professional support from AALA. And we have been providing that support.

Agricultural Law Update, our principal means of communication with our members, has become a timely source of information about new developments and trends in agricultural law. Specialists report on important agricultural law issues, and state reporters follow recent developments in their jurisdictions. *Agricultural Law Update* is possible only because of the professional work of our editor, Linda Grim McCormick, and the generous commitment of many of our members.

This Annual Educational Conference, too, serves our members and others who are always welcome to attend. The Conference provides significant high-level professional education plus the opportunity for practitioners to earn Continuing Legal Education credit. The Board of Directors decided in 1990 to ensure that each Conference includes an hour of continuing education in legal ethics. The AALA Annual Conference also offers the valuable

3. James B. Dean, *The American Agricultural Law Association and Agricultural Law (An Appraisal of a Year as Association President)* (Oct. 15-16, 1987) (unpublished speech given at the Eighth Annual Meeting and Educational Conference of the American Agricultural Law Association).

4. Others who have served AALA as President are Donald L. Uchtmann, Dale C. Dahl, J.W. Looney, Keith G. Meyer, Philip E. Harris, Phillip L. Kunkel, and Donald B. Pedersen.

opportunity to meet informally with colleagues whom we may see only once a year.

Articles from the Conference are published as a symposium issue of a law review, which is mailed to each AALA member. This issue provides an educational opportunity for members who were unable to attend the Conference, and the published articles are a valuable resource for everyone.

The Membership Directory is another important service. Although the Directory has been issued rather sporadically, a more efficient computer system will make it easier to provide regular updates and to print new editions more frequently. The annual Job Fair, held in connection with the Educational Conference, is available to potential employers and employees (both students and others seeking new employment) in agricultural law professions.

By serving our membership, especially in enhancing their competence, the American Agricultural Law Association also serves the agricultural law profession. As the Association has matured, some of our efforts have begun to focus on direct service to wider agricultural and legal communities, beyond the confines of our membership. Two programs, developed by Ad Hoc Committees, have great potential for this wider service.

The first program is from our Legislative Support Committee, which has explored the possible contributions of AALA members in addressing problems in statutes relevant to agriculture. The Committee's pilot projects will determine whether it is feasible for AALA to provide nonpartisan legislative support—for example, to review existing or proposed statutory language or to provide research or practice resources in emerging areas of agricultural law. Proposed projects will be evaluated on the basis of significance, timeliness, political neutrality, and the willingness of AALA members to participate in the project. The work will be done by ad hoc subcommittees formed for specific projects. Although the effort will begin on a small scale, member enthusiasm and participation could result in a very real impact from this program.

The second program has been developed by the Ad Hoc Committee on Alternative Dispute Resolution. For the past two years, this committee has collected resources and studied the process of negotiation and alternative dispute resolution (ADR), with particular attention to agricultural dispute resolution. The Committee has evaluated several possible approaches that will benefit AALA members, agriculture, and the legal profession. The Committee,

with support from the Association Board of Directors, will work to develop an educational program on agricultural ADR and to establish relationships with other organizations with an interest in ADR. One special focus will be the application of ADR in emerging areas of agricultural law (for example, the areas of biotechnology and agro/environmental law). Like the legislative support program, Association efforts in this area will be successful only to the extent that interested members participate.

These programs, and other AALA activities, exist through the generosity of AALA committee members who have donated their time and talent. But they will thrive only with the commitment of other AALA members as well. No one can do everything, but everyone can do something. All AALA members are invited to become involved!

Our recent efforts in AALA have also begun to extend beyond our own national borders. As our world becomes more closely interrelated, we, as AALA members and as individuals, have the opportunity to become involved in agricultural law on an international level.

As an Association, we have cooperated on several occasions with the *Comité Européen de Droit Rural* (the CEDR—the European Committee of Rural Law, made up of twenty European national associations). In 1986, a number of our members participated in the Euro-American Agricultural Law Symposium and Third Symposium of the *Comité Européen de Droit Rural* in Plymouth, England.⁵ Again in 1989, AALA cooperated with CEDR, when several members participated in the XVth European Agricultural Law Congress in Ghent, Belgium.⁶ AALA has invited the CEDR to participate in our September 1992 meeting in Chicago, and we hope that this collaboration will be successful.

In October 1991, the President of the CEDR reported that its Board of Directors has agreed to amend its statutes so that non-European associations like AALA can be Associated Members of the CEDR. This is a first step in opening the CEDR to wider participation and giving AALA members more significant contact with European agricultural lawyers.

Another international agricultural law organization is the

5. PROCEEDINGS OF THE EURO-AMERICAN AGRICULTURAL LAW SYMPOSIUM AND THIRD SYMPOSIUM OF THE C.E.D.R., AGRIC. L. BULLETIN, No. 4A (Plymouth, England, Sept. 1986).

6. REPORTS OF THE XVTH EUROPEAN AGRICULTURAL LAW CONGRESS, (Ghent, Belgium, Oct. 2-6, 1989).

Unione Mondiale degli Agraristi Universitari (per il Diritto Agrario e il Diritto dell'Alimentazione). This organization was founded in Pisa, Italy in 1988 and is referred to by the acronym, UMAU. This World Union of University Agriculturalists includes agricultural law teachers from Europe, North America, South and Central America, Africa, Australia, and Asia. Several AALA members also belong to UMAU. Though UMAU's membership is limited to agricultural law teachers, some level of cooperation with this organization may also be desirable for AALA in the future.⁷

Other AALA activities have an international focus. For example, AALA will be a co-sponsor of an International Agricultural Law Conference to be held at Iowa State University in April 1992.⁸ This conference is part of Professor Neil Harl's important effort to help agricultural lawyers in the countries of the former Soviet Union understand how the U.S. legal system guides economic activity in agriculture and to help U.S. lawyers appreciate the problems faced now by the agricultural sector in those countries.

What have we to gain from this cooperation? And, equally important, what can we contribute by our own interest and involvement in international agricultural law matters?

Each of us has much to gain from international cooperation. Speaking personally, I have learned from my experience in the Netherlands and in other European countries during the last few years. That experience offered me the opportunity to meet and cooperate with new colleagues who approach legal questions from divergent points of view. It offered me the chance to learn something (but certainly far from everything) about other legal systems and convinced me (yet again) of the importance of language training. Knowledge about another legal system helps us to think about our own system in a different way, to ask new questions about our own law and policy.

But the importance of international activities goes far beyond personal satisfaction. As European Community Agriculture Commissioner Ray MacSharry commented recently, "No matter where we are, we no longer live on an island."⁹ In the future, the structure of the U.S. agricultural industry and the trade in U.S. agricul-

7. The *Unione Mondiale degli Agraristi Universitari* can be contacted at the Scuola Superiore di Studi Universitari e di Perfezionamento S. Anna/Via G. Carducci, 40/56100 Pisa/Italy.

8. International Agricultural Law Conference (U.S.A., Commonwealth of Independent States, and the Baltic States): *The Role of Law in an Agricultural Market Economy*.

9. *Quotes*, 3(7) EURECOM, July/Aug. 1991, at 3.

tural products are sure to be affected by developments in Europe, Eastern Europe, the countries of the former Soviet Union, and in the rest of the world. Involvement of agricultural lawyers will be essential as our own law and policy evolve in response.

For example, the European Community (EC) is likely to assume increasing economic importance. The Single European Act¹⁰ made significant changes in the Treaty of Rome, which governs the European Community. The single market, scheduled for completion by the end of 1992, coupled with the improved decisionmaking processes and related increased economic and social solidarity among Member States, will have an enormous impact beyond the borders of the EC.

In late October 1991, at a meeting in Luxembourg, nineteen European countries (the twelve EC countries plus the seven nations of the Free Trade Association) agreed in principle to form a new common market, the European Economic Area, to be effective in 1993. Though integration in the difficult area of farm products has been postponed, this development is significant because it will create the world's largest trade bloc, with 380 million consumers.¹¹

The European Community itself may evolve, in light of the growing number of membership applications (five pending in September 1991) and the possible membership of countries in the new European Economic Area. The eventual addition of countries in Eastern Europe and the former Soviet Union could mean a doubling of the current membership of twelve, presumably with some change in EC institutional structure.¹²

Agriculture is a significant industry in Europe and an important component of the EC economic structure. Farming uses more than fifty percent of the total land area of the EC; more than eighty percent, if forests are included.¹³ But Europe has ten million farmers on the same amount of land on which the United States has only two million.¹⁴

10. COUNCIL OF THE EUROPEAN COMMUNITIES, SINGLE EUROPEAN ACT (Brussels 1986).

11. Alan Riding, *Europeans in Accord to Create Vastly Expanded Trading Bloc*, N.Y. TIMES (Nat. ed.), Oct. 23, 1991, at A1, C18.

12. *Leading to a Community of 24?*, 3(8) EURECOM, Sept. 1991, at 1.

13. Commission of the European Communities (Communication of the Commission to the Council and to the European Parliament), *The Development and Future of the Common Agricultural Policy*, COM(91) 258 final, July 11, 1991, at 33.

14. Victor Smart, *The handout harvest*, THE EUROPEAN, Aug. 2-8, 1991, at 1-2.

The Common Agricultural Policy (the CAP),¹⁵ the EC policy somewhat analogous to our federal farm programs, operates on the principles of the single market, Community preference, and financial solidarity.¹⁶ It is the EC's major common policy.¹⁷ In fact, in 1990, 65.3% of the EC's total budget was spent for agriculture policy expenditures.¹⁸ Reforms of the Common Agricultural Policy currently under negotiation can be expected to have implications for U.S. agriculture. And the CAP is a contentious issue in the GATT¹⁹ negotiations involving more than one hundred nations.²⁰

Dramatic changes in Eastern Europe, the Commonwealth of Independent States, and the Baltic States will also have important implications for agriculture, both in terms of food production in those countries and trade with other nations. As Eastern countries move toward a market economy, they must develop legal mechanisms capable of guiding the process and accommodating change. Even concepts as basic as private ownership of land must be introduced with an appropriate legal framework. The expertise of American agricultural lawyers may be welcomed as new legal institutions are considered and implemented in the next few years. Thoughtful analysis of appropriate legal institutions, especially in light of their political and social acceptability and their economic feasibility, will be necessary. Legal institutions will not be accepta-

15. The CAP is grounded in the EEC Treaty of Rome (Mar. 25, 1957), arts. 38-47. Article 39(1) states the objectives of the CAP:

- (a) to increase agricultural productivity by developing technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factor of production, particularly labour;
- (b) to ensure thereby a fair standard of living for the agricultural population particularly by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilise markets;
- (d) to guarantee regular supplies; and
- (e) to ensure reasonable prices in supplies to consumers.

Treaty Establishing the European Economic Community, art. 39(1) (1957), reprinted in PAUL MINET, FULL TEXT OF THE ROME TREATY AND AN ABC OF THE COMMON MARKET 26-27 (1962).

16. The single market principle refers to free movement of agricultural products from one member state to another. Community preference requires priority for the sale of Community produce; the internal market is protected by instruments that regulate the flow of imports and exports. Under the financial solidarity principle, which requires shared costs, the European Agricultural Guidance and Guarantee Fund finances the CAP. See OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITY, A COMMON AGRICULTURAL POLICY FOR THE 1990s, Periodical 5/1989, at 16-17.

17. FRANCIS G. SNYDER, LAW OF THE COMMON AGRICULTURAL POLICY 4 (1985).

18. COMMISSION OF THE EUROPEAN COMMUNITIES, THE EUROPEAN COMMUNITY 1992 AND BEYOND, 31 (1991).

19. GATT refers to the General Agreement on Tariffs and Trade.

20. See Peter Pooley, *The Future of the C.A.P.: The Commission View*, at 8 (June 9-10, 1988) (unpublished speech given at the EEC Agricultural Law Conference, Dublin, Ireland).

ble merely because they have worked in the United States or in other Western nations. In this rapidly developing process, thoughtful U.S. agricultural lawyers and economists may be able to make a real difference.

Another arena to which international, as well as national, attention will be drawn is the environment. Environmental degradation does not respect national or even continental boundaries.²¹ As the world is seeing ever more clearly, agriculture plays a role in the degradation, as well as the protection, of the environment and its natural values.

As agricultural lawyers who represent farmers, work for government, teach, and do research, we will need to become increasingly aware of the effect of farming on the environment. In part, this interest will be practical, as we are involved with formulating and analyzing environmental policy or advising clients on environmental compliance.

In many of the first-generation U.S. environmental statutes, agriculture has enjoyed exceptions²² or relatively lenient regulation. It is now becoming evident, to both lawmakers and citizens, that agricultural activities are a significant source of pollution, particularly (but not exclusively) in surface and ground waters. The regulatory climate for agricultural activities is already changing. For example, in this country, we can probably expect more stringent regulation directed at limiting agricultural nonpoint-source water pollution and protecting groundwater from further contamination.²³ As Professor Davidson noted, "It is inevitable that the agricultural pollution problem will eventually require the direct regulation of individual farms, just as we now regulate the environmental effects of industry, commerce, and governments."²⁴

Other nations have already begun to regulate some agricultural activities strictly. Examples include the stringent manure

21. *Supra* note 18, at 17.

22. For example, the return flows from irrigation. See 33 U.S.C. § 1362(14), § 1342(1)(1) (1988); see also John H. Davidson, *Little Waters: The Relationship Between Water Pollution and Agricultural Drainage*, 17 *Envtl. L. Rep. (Envtl. L. Inst.)* 10074 (1987).

23. Serious study of the problem has already begun. For example, the U.S. Department of Agriculture's National Agricultural Statistics Service carried out a Water Quality and Farm Chemical Survey in four U.S. areas in November and December 1991. The survey is part of a government program, initiated in 1989, to define water quality problems related to agro-chemical use, collect data on farm and chemical practices, and develop productive and profitable alternative farming methods. OFFICE OF PUBLIC AFFAIRS, USDA, SELECTED SPEECHES AND NEWS RELEASES (Oct. 3-9, 1991).

24. John H. Davidson, *Environmental Analysis of the Federal Farm Programs*, 8 *VA. ENV'T L.J.* 235, 265 (1989).

legislation,²⁵ manure banks, and requirements for mineral book-keeping in the Netherlands; reductions (voluntary or mandatory) in the use of agricultural chemicals in some countries;²⁶ and efforts to remedy the effects of land degradation in Australia.²⁷

Some nations, of course, are only beginning to recognize their significant environmental problems. Serious pollution exists in the eastern parts of Europe, for example.²⁸ Perhaps, as one person commented, some of these "[e]nvironmental problems are the natural consequence of an absence of property rights. . . . Only property rights can effectively integrate environmental and economic values."²⁹

On the EC level, regulation of agricultural activities to protect and preserve the environment is also likely to increase. The Single European Act added a new Title VII on the environment³⁰ to the Treaty of Rome, thus making environmental protection a central part of EC policy and economic decisionmaking. A new European Environment Agency will play a significant role both in providing objective, reliable information that will enable Member States to protect the environment and in offering technical and scientific support.³¹ The EC's Fourth Action Program on the Environment noted that "[i]nappropriate land use damages landscapes' quality and areas of special interest for conservation; misuse of chemicals and the uncontrolled disposal of agricultural wastes pollute water supplies and damage wildlife."³² It recommended a series of EC actions focused on the use of agro-chemicals, treatment of agricultural wastes, and conservation of species, habitats, and landscapes.

25. Wim Brussaard, *Protecting Agricultural Resources in Europe: A Report from the Netherlands*, 24 IND. L. REV. 1525, 1535-42 (1991).

26. Anne C. Weinberg, *Reducing agricultural pesticide use in Sweden*, 45 J. SOIL & WATER CONSERVATION 610 (1990).

27. See Ben Boer & Ian Hannam, *Agrarian Land Law in Australia*, in AGRARIAN LAND LAW IN THE WESTERN WORLD (Margaret R. Grossman & Wim Brussaard eds. forthcoming 1992); J.W. Looney, *Land Degradation In Australia: The Search For A Legal Remedy*, 46 J. SOIL & WATER CONSERVATION 256 (1991).

28. In the eastern part of reunified Germany, environmental clean-up costs are expected to exceed \$100 billion. Cynthia Pollock Shea, *One Year after Unification: Germany Still Has Long Way To Go To Clean Up Polluted Eastern Region*, Int'l Env't Rep. (BNA), at 555 (Oct. 9, 1991).

29. The unnamed speaker was quoted in Steve Symms, *In Defense of Private Property*, 46 J. SOIL & WATER CONSERVATION 244 (1991). See also EPA Administrator William Reilly's comment in the same article.

30. Article 25 of the Act added a new Title VII (arts. 130R-130T) to the Treaty. COUNCIL OF THE EUROPEAN COMMUNITIES, SINGLE EUROPEAN ACT (Brussels 1986).

31. Council of European Communities, Council Regulation (EEC) No. 1210/90 (regulation for the establishment of a European Environment Agency), No. L 120/1 (1990), reprinted in 2 Int'l Env't Rep. (BNA), at 131:8001.

32. Council of European Communities Fourth Action Program on the Environment, 2.3.6 (1987), reprinted in, 2 Int'l Env't Rep. (BNA), at 131:0510. A new seven-year program was announced March 8, 1992. 15(6) Int'l Env't Rep. (BNA), at 156 (Mar. 25, 1992).

As this EC Action Program on the Environment makes clear, environmental awareness means more than simply avoiding pollution; it also means protecting natural resources before degradation occurs. The situation is also changing in this arena, both in the United States and abroad. As we all know, the Food Security Act of 1985³³ made eligibility for USDA farm programs contingent on compliance with conservation programs intended to protect fragile and vulnerable farmland. The Food, Agriculture, Conservation, and Trade Act of 1990³⁴ went even further in identifying conservation goals and implementing those goals through farm policy.

In the EC, the Commission recently emphasized the importance of recognizing and compensating farmers for their role in the protection of the rural environment and management of the landscape.³⁵ Some individual EC countries have been following this approach for years.³⁶ Proposed reforms of the CAP include agro-environmental measures structured as financial incentives to encourage production with low risks of pollution and environmental damage (that is, low-input crop production and reduced numbers of livestock). In addition, the CAP reform proposal suggests aids to promote farming that will conserve diversity and quality of scenery, flora, and fauna, and to allow long-term environmental set-aside of land.³⁷

Closely related to these proposed CAP reforms and to the conservation provisions in U.S. farm policy is the issue of sustainability, both in developed and developing nations. The April 1991 Den Bosch conference on international sustainable agriculture, attended by representatives from more than one hundred nations, indicated that the issue of sustainability is closely linked to international terms of trade and agricultural export markets.³⁸

One statement from the Den Bosch declaration presents a challenge to everyone involved with agriculture:

Ecological, economic, and social imbalances not only affect the viability of the agricultural sector for the present generations, but also for future generations. This is

33. Pub. L. No. 99-198, 99 Stat. 1354 (1985).

34. Pub. L. No. 101-624, 104 Stat. 3359 (1990).

35. Commission, *supra* note 13, at 33.

36. See, e.g., Margaret Rosso Grossman, *Management Agreements in Dutch Agricultural Law: the Contractual Integration of Agriculture and Conservation*, 16 DENVER J. INT'L L. & POL. 95 (1987).

37. Commission, *supra* note 13, at 33-34.

38. Charles Benbrook, *The Den Bosch Declaration: Grappling with the Challenges of Sustainability*, 46 J. SOIL & WATER CONSERVATION 349, 350 (1991).

partly due to the fact that prices for agricultural commodities may not fully reflect the cost of producing them sustainably. Bearing in mind the expected role of agriculture in society and the economy, the relationship between agriculture and the environment must be reconsidered so that this vital activity can be maintained on a sustainable basis.³⁹

Agricultural lawyers, like others in our society, must think in terms of the ecological equivalent of the Golden Rule: that is, "each generation should meet its needs without jeopardizing the prospects of future generations."⁴⁰

These reflections have concentrated on the work of the AALA and some of the international and environmental challenges that we face. But, as agricultural law professionals, we can expect new developments and new challenges in all facets of agricultural law. I hope that we will cooperate to meet these challenges, and I trust that our American Agricultural Law Association will continue to support us in our efforts.

39. *Id.* at 351 (quoting paragraph 7 of the declaration). The statement continues: "To the extent that life styles of the rich imply excessive claims on global resources, they are unsustainable and will have to be adapted." *Id.*

40. Alan Durning, *Limiting Consumption: Toward a Sustainable Culture*, THE FUTURIST 10, 13 (July-Aug. 1991), adapted from WORLDWATCH INSTITUTE, STATE OF THE WORLD 1991.

