

## **Land Use, Food Production and Conservation: Property Rights and Institutions**

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Much of the discussion about regulation and property rights, as well as the ongoing debate about slow versus fast food production in places like France, is missing something important – the evolution of property rights and institutions, especially private institutions.

Both public and private institutions emerge as a response to change, but with some important differences. Rules and regulations enforced by public agencies normally strive to preserve the status quo, or at least to protect it and nurture it for as long as possible. Private responses to change, however, are more likely to be adaptive and receptive to change, or at least philosophical about its inevitability. Virginia Postrel explored this subject in depth in her book *The Future and its Enemies* (1998), which claims that “open-ended trial and error - not conformity to one central vision - is the key to human betterment.” Thus the “enemies” that she describes “are those who insist on prescribing outcomes in advance, circumventing the process of competition and experiment in favor of their own preconceptions and prejudices”. In other words, those whose response to change is stagnation, rather than adaptation.

Of course, as Ian Hodge (this volume) points out, some government institutions do provide frameworks within which change and evolution occur, but this is not the idea that much of the proponents of countryside and land-use regulation have in mind. The regulation of fresh water useage is one such example. In California, because regulatory attempts to apportion and restrict water use have relied almost completely on political favoritism and draconian measures to maintain the status quo, which have only exacerbated the problem (see, for example, Reisner, 1986). As a result, farmers grow monsoon crops in the dessert (using more water than the entire Los Angeles basin in the process), while urbanites face severe water restrictions. This despite the fact that urban water users routinely pay forty times as much for their water as agricultural users.

In contrast, other states such as Oregon have allowed more market transactions to take place, at least between ranchers and environmental groups, so that more water gets used for wildlife with less conflict. Called water trusts, organizations throughout the American West have been founded as legal restrictions have been relaxed so that environmentalists can pay farmers for water instead of trying to convince regulators to expropriate it. (see Smith et al, 2000).

Another fantastic example of ingenuity and adaptation, as well as the futility of regulating for the status quo, comes from the fisheries. When regulators in Alaska tried to restrict the harvest of Halibut, they simply shortened the season, assuming that with less time to

fish, fishermen would catch fewer fish. But because they did not take human ingenuity into account, they were wrong. Thus, a fishing season that was once almost ten months long soon dwindled to two twenty-four hour derbies, with no real reduction in harvest, because wily fishermen figured out (invested great sums of money in) ways of catching more fish, more quickly. The situation is now much improved with the creation of a system of tradable quotas that allot fishermen a set percentage of a total catch, and then let them sell and lease this quota (see De Alessi, 2002). A similar system in New Zealand has allowed fishermen to turn their ingenuity into ensuring the longevity (and profitability at the same time) of their fisheries (De Alessi, 1998).

The work of Terry Anderson and P. J. Hill (1975) on the evolution of property rights in the frontier American West is especially encouraging in this regard. They observed that a innovative solutions to the problem of how to protect cattle grew out of private ownership. In the frontier American West, no one could initially imagine how privately owned cattle could be monitored and protected, but left to their own devices, cattlemen developed a complex system of brands and cattlemen's organizations to sort out ownership on the range. Then outside entrepreneurs developed barbed wire as an inexpensive way to fence in cattle. One can only imagine what an expensive and ineffectual mess would have resulted if the West had remained an open range governed by something like the Ministry of Grazing, which tried to maintain the quality of the range and the health of the cattle population through a set of strict regulations.

This may sound silly, but it is precisely how much of agriculture land use is determined in both the EU and the United States, where a Byzantine set of regulations, subsidies, and fiats determine agricultural policy. Which of course has a dramatic effect on land use, and which often serves to maintain the status quo – as well as enrich a small few. In the United States, for example,

Eligibility for farm subsidies is determined not by income or poverty standards but by the crop that is grown. Growers of corn, wheat, cotton, soybeans, and rice receive more than 90 percent of all farm subsidies, while growers of most of the 400 other domestic crops are completely shut out of farm subsidy programs. Further skewing these awards, the amounts of subsidies increase as a farmer plants more crops. Thus, large farms and agribusinesses--which not only have the most acres of land, but also, because of their economies of scale, happen to be the nation's most profitable farms--receive the largest subsidies.

- Brian Riedl, 2002.

This is far from the image that is popular politically of portraying agricultural policy as beneficial to the small family farmer. And in most cases, these kinds of subsidies and handouts increase monocultures and hurt smaller, artisan producers.

Another way that larger operations are assisted is through the abrogation of common law remedies to nuisance and trespass, as is the case with “right to farm” laws that, for example, allow malodorous pollution to affect surrounding areas (see Brubaker, this volume). Many of these odors and other pollutants are the result of scale, that is, larger production facilities.

Of course, scale in and of itself is not a negative, and in fact there are great societal health benefits to reducing the price and availability of fresh fruits and vegetables. But when the issues are land use and type and quality of food produced, there is no doubt that subsidies and regulations that favor larger producers which alter the landscape and the food market. It is not government which should determine the size and quality of an industry, but rather local economic and environmental circumstances.

Another dramatic effect on land use is, of course, the opportunity cost, which also rises the more restrictions and zoning regulations are created in nearby areas. For example, when a large swathe of land is set aside as open space, property values surrounding this area tend to rise, both from the amenity value of the open space and from the simple fact that there is now a reduced supply of buildable land. But, as evidenced in the fisheries, even restrictions aimed at favoring agriculture over housing are rarely totally successful. Thus, limits that set minimum acreage sizes (for example, no more than one house per three acres) or that demand working agriculture simply spur developers to market to more upscale buyers, or to find the legal means of satisfying the minimum requirements while still allowing some development.

The private response to the problem of rising land values, has, however, been more successful, most notably in the rise of the land trust movement. Land trusts are wide and varied in the United States, with some almost wholly private to others which merely help with government land acquisition. Those whose mission is to preserve working agricultural landscapes, however, seem to have fared well because they depend on a property rights solution (as well as a legal regime which grants land donors a tax break) which cedes development rights to the land trust (see Hocker, this volume). In other words, these successful land conservation organization depend on the flexibility of property rights, not regulatory restrictions, to achieve their goals, and so they have been much more flexible and adaptive than similar public land use efforts.

One such example in the San Francisco Bay area of California is MALT, the Marin Agricultural Land Trust. MALT was:

the first land trust in the United States to focus on farmland preservation. Founded in 1980 by a coalition of ranchers and environmentalists to preserve farmland in Marin County, California, MALT acquires agricultural conservation easements on farmland in voluntary transactions with landowners. MALT also encourages public policies that support and enhance agriculture. It is a model for agricultural land preservation efforts across the nation. MALT has so far permanently protected 38,000 acres of land on 57 family farms and ranches.

- MALT, 2006.

One of the most significant effects of MALT's efforts to allow its members to continue to be in agriculture has been a spike in the production of quality foods in Marin County. Or, more accurately, it was a concurrent process. While landowners were being pressed by high property values, they (particularly dairies) were also being pressed to reduce their herds as a result of stricter water quality regulations (something not unlike might have occurred under a common law solution, as much of the pressure to reduce runoff came from nearby leased oyster beds whose product was damaged when pollution levels were too high). Thus, landowners looked for ways to increase the profitability while lowering production. And so they turned toward producing higher quality foods, and often processing it themselves.

Thus, the Strauss Dairy, which once sold most of its milk into a cooperative, now markets high quality milk, yogurt, butter and ice cream directly to the public, and is widely distributed around the Bay Area. In addition, the focus on higher quality production led to the creation of an artisan cheese company in Marin County, situated nearby the Strauss Dairy to take advantage of the high quality milk. This in turn has increased interest in other markets and restaurants in Marin, which has led to other growers to increase quality (and lower production) of such things as fruits, vegetables, and beef.

The production of wine is another potent example of how reducing production (and often environmental impact) and increasing quality may have a dramatic effect on land use, especially in areas where land values are rapidly rising. Such has certainly been the case in the Napa Valley, where similar areas surrounding San Francisco have been developed into houses, Napa remains primarily agricultural. Of course, where land values are not rapidly rising, there tends to be less wealth, less environmental quality (see, for example, Goklany 2002), and of course, more interest in cheaper food rather than artisan cheese.

Such is certainly the case in France, where quality food production is far more important (as well as taken for granted) as it is in the United States. In fact, France has such wide availability of high quality (and expensive) food, that it is no wonder a business like Carrefour is so popular. But still, those like Jose Bove who decry anything industrial are surely barking up the wrong tree, as one look at a place like the United States shows, where the pendulum is swinging toward quality production rather than toward lower prices. And of course, going on hunger strikes in support of subsidies as Mr. Bove has done (BBC 4, 2002), is barking up the wrong tree. The answer is not more subsidies, but less.

A dedicated group of artisan food producers in the United States are pushing demand for higher quality products, especially those that speak of terroir, whether wine, cheese, or strawberries. And while the growth of the produce section at Carrefour may be troubling to some, one taste of in-season, freshly-picked Carpentras strawberries from market in the Place Richelme in Aix-en-Provence should be enough to convince anyone that there will always be a place for high-quality produce, and the landscape that it engenders. And far

more of it will produced in the future if its promotion is left to human ingenuity and private institutions, rather than regulation or subsidy.

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