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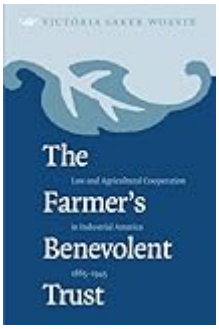

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THE FARMER COOPERATIVE MOVEMENT AS TRAGEDY

For decades, scholars have examined the intersection of industrialization and law. Victoria Saker Woeste, a research scholar with the American Bar Foundation, continues in this tradition with her examination of the intersection of agricultural marketing, industrialization, and law. Following Willard Hurst and his method of legal history, Woeste seeks to examine how farmers "dynamically deployed law" to shape politics and markets (p. 2). Her book is a critical contribution to the history of modern American political economy, which is too often dominated by histories of big business, labor, and the state, with little attention to law and practically no attention to the economic development of agriculture.

Such a book is long overdue. It reviews critical events in the development of American agriculture that have not received significant attention for close to a century and offers an impressive interpretation of the statutes and cases that have shaped modern cooperative law, a key subfield of agricultural law. Lest these developments be thought inconsequential, it bears repeating that the legal controversies that shaped early twentieth century American agriculture went to the heart of the bitter battles over the proper constitutional limits on policy-makers who wanted to manage and regulate the industrial economy.

The prominence of agriculture in constitutional law has prompted Jim Chen to propose a seminar on "The Potable Constitution," which would involve a "tour of American constitutional law using naught but cases involving liquor, beer, wine, and milk."[1]

One sympathizes with Woeste's attempt to organize her research. Reviewing case law developments, which are not easily categorized, is no easy task. Reviewing several different threads of case law development is even more difficult, especially when attempting to describe events on the ground in California. The final design is

effective, however, albeit with some overlap. The book will make a mighty contribution to our understanding of the development of modern agriculture.

To counter industrial combinations and trusts in the late nineteenth century, farmers began to organize cooperatives. From 1889 to 1897, eleven states exempted farmers from their state antitrust laws so that their organizational efforts would not be hampered. Unfortunately for the farmers, the cooperative movement bumped up against the Constitution.

In 1897 a federal court in Texas held that the exemption violated the equal protection clause because it found no justification for treating farmers differently.[2] In 1902, the U.S. Supreme Court similarly held that the farmer exemption contained in the Illinois Antitrust Act of 1893 violated the Fourteenth Amendment's equal protection clause.[3]

The resulting absence of an exemption exposed farmers to violations of competition law. Not surprisingly, processors and other middlemen immediately attempted to squelch farmers' efforts to organize their marketing by boycotting farmer cooperatives and buyers who bought from them. Since economically desperate farmers were tempted to leave the cooperative fold during such boycotts, cooperatives needed to include "maintenance clauses" in their contracts with farmers. If farmers breached their agreement to market through the cooperative, they could be fined, a practice that many courts saw as a "restraint of trade."[4]

When, in *Loewe v. Lawlor* (1908), the Supreme Court exposed farmers to federal antitrust prosecution, federal lawmakers began to respond. In 1913, Congress attached a rider to federal legislation that suspended the authority of the Department of Justice to prosecute farmers and workers for antitrust violations, an annual ritual that continued until 1927 (since support for farmers was so strong, the Congressional debates over the rider mostly focused on labor). Another part of this story is Congress's enactment of the Clayton Anti-Trust Act of 1914. In addition to addressing corporate mergers, the new law specifically exempted non-stock farmer cooperatives from antitrust prosecution. In Woeste's view, the exemption was limited to non-stock cooperatives because they more closely resembled the cooperative ideal adhered to in the nineteenth century. The continuing lack of clarity about the application of the antitrust laws to farmer cooperatives and federal antitrust prosecutions prompted additional federal legislation. The Capper-Volstead Act of 1922 exempted both stock and non-stock farmer cooperatives from the antitrust laws.

In tandem with the macro developments in cooperative law, Woeste offers a synecdoche – a detailed account of the cooperative efforts of the raisin growers of California. In 1912, an industry-wide association known as the California Associated Raisin Company (CARC) was formed. In addition to other California associations in oranges, walnuts and almonds, the raisin growers embraced the "hallmark of California-style cooperation: monopoly control over the crop" (p. 30). The CARC was so successful that by 1918 it included ninety percent of the state's raisin growers. High food prices after World War I, in addition to the uncertain antitrust status of farmer cooperatives, attracted the attention of federal antitrust enforcers. Interference from both the Department of Justice (DOJ) and the Federal Trade Commission (FTC) helped spur legislative support for the Capper-Volstead Act, effectively eliminating the antitrust threat to farmer cooperatives.

The much greater threat to the CARC came from its inability to hold farmers together. Despite great promotional campaigns and, at times, outright coercion, the number of raisin growers organized by the CARC and its successor Sun-Maid dwindled to sixty percent by 1925 and to thirty-five percent by the early 1930s. As Woeste explains, "the strongest monopolies could still be undermined by the uncoordinated economic decisions of individual producers" (p. 189).

Despite her brilliant rendering of the CARC-Sun-Maid story, one still wonders about Woeste's choice of synedoche. Milk cooperatives offered another potential choice, especially given the critical role they played in the passage of Capper-Volstead, the state's decision to coordinate agricultural markets in the 1930s, and in the cases which determined the legitimacy of the state intervention. Tobacco was also a possibility, especially given the struggles of tobacco farmers against the tobacco trust (which the state broke up in 1911), the prominent role tobacco cooperative organizer Robert Bingham played in the drafting and passage of state cooperative laws, and the 1928 Supreme Court show-down between the tobacco companies and farmer cooperatives. Or Midwestern cooperatives could have been the focus. After all, Capper was from Kansas and Volstead was from Minnesota.

This is not to say that a California focus was not wise. But it is to highlight the danger of drawing too many conclusions based on the California experience. For example, the raisin industry benefited from its limited production area, which fostered the organizational efforts of raisin

growers because monitoring was relatively simple. This explains why at times the organization of the raisin industry exceeded ninety percent and the organization of wheat farmers never exceeded five percent. As Woeste notes: "The geographic monopolies that made the California commodity marketing plan work so well were not present in the staple crops Sapiro sought to organize in the South and Midwest" (p. 202) In the raisin industry, therefore, Woeste has chosen an outlier. Since most cooperatives were never able to organize to the same extent and thus never posed any of the dangers of the raisin sector, public concern with potential farmer monopolies was minimal. Most Congressmen thought the danger of monopoly pricing remote, as did the great cooperative organizer Aaron Sapiro, who should have been given to extravagant claims about the economic benefits of cooperative organization. As Woeste concedes, despite the ultimate success of farmer cooperatives in court, "their legal triumph [was] undermined by chronic economic instability, excess productive capacity, and [the] inability to control output" (p. 214).

The focus on California may have fueled Woeste's insistence on a theme of irony. Woeste dwells on what she views as a central irony of the cooperative movement, that farmers concerned about monopolistic big business would embrace monopoly practices themselves. Such an argument confuses efforts at economic organization with the embrace of monopoly practices. The space between the promotion of cooperatives and complete cooperative monopoly is gaping. Cooperatives were designed to give farmers a certain degree of bargaining power with a heavily concentrated processing sector. Few farmers or farm leaders were under any illusions about the emergence of one large cooperative that could monopolize an entire sector of agricultural production. Woeste's focus, the raisin industry, could be misleading in this way, given its regional location and amenability to organization. But even the raisin cooperative, as Woeste masterfully recounts, was wracked by dissension, making violence and coercion necessary to hold the organization together. A review of the large number of cooperative failures during the Alliance period would also lead one to doubt that many farmers believed a complete monopoly of very many sectors was possible.

The irony stems from the farmers' abandonment of cooperative principles, which Woeste traces to the Rochdale weavers of England. But this model may be misleading. The organization of American farmers was often attempted before the Rochdale experiment in England: as early as the 1820s, Ohio farmers pooled their hogs to get a better price and Pennsylvania farmers, detecting a brewer conspiracy to depress the price of barley, actually built their own brewery in Philadelphia.[5] Despite an early interest in Rochdale, many of the leaders of the late nineteenth-century farm movements quickly began to doubt the usefulness of the Rochdale model. Woeste acknowledges this early in her work: "As the Grangers and the Alliance discovered the legal and economic impediments to cooperative marketing in the late nineteenth century, farmers realized that Rochdale cooperation, however intellectually attractive, could not solve the marketing problem" (p. 21). Critics are wrong to say that Woeste missed the abandonment of Rochdale by the Alliance and Populism, but it would be correct to say that the abandonment makes the emergence of corporate-style cooperatives decades later much less ironic.[6] It also makes pragmatism as an organizational theme much more plausible. Instead of an ironic betrayal of Rochdale principles, a narrative of adaptation to changing circumstances – such as the growing skepticism of Rochdale and the continuing concentration of economic power in the industrial sector – may be more persuasive.

Because of the prevalence of the irony theme and its determination to expose farmers as rent-seeking hypocrites, Woeste's book at times resembles a Cato Institute brief. Farmers were eager to monopolize and therefore "manipulated" the cooperative image to attain their goal: "Uninterested from the start in carrying on the Rochdale tradition, California growers unreservedly exploited it" (p. 235). Farmers embraced the corporate form "while seeming to maintain a dignified distance from the specter of conspiracy, collusion, and corruption that these institutions evoked in the public mind," all because farmers thought they were a "special class of entrepreneurs" (p. 6). In the end, farmers were able to extract support for "long-standing policies of governmental privileges, subsidies, and favoritism" (p. 7).

It also may be the case that farmers were not abandoning a beloved ideology that they long held dear. The abandonment of Rochdale principles, which were never very well established in the United States, does not necessarily entail the abandonment of republican or agrarian ideology. And the embrace of commodity marketing does not necessarily mean the betrayal of rural republicanism and the "values Americans automatically associated with rural life: self-help, decentralized economic power, and individualism" (p. 31). One could say that even CARC/Sun-Maid was loyal to these principles –self-help through collective action made possible the continuing decentralization of the production sector, which, as

Woeste notes, was characterized by small Jeffersonian economic units. The arrangement also preserved individualism, at least in the republican free labor sense, by not forcing farmers to leave the land to become migrant laborers or miners or factory drones. Through cooperative marketing a farmer would lose some freedom to market where he chose, but that was not much of a loss to a small farmer whose only other option would be to sell to one monopsonistic packer. Hence one wonders, as Woeste argues, if the CARC actually "sundered the picture of American farmers as scattered, individualistic, and dedicated to organizational efficiency" (p. 138). And it leaves one skeptical of the argument that "the new form of cooperation defiled the hallowed tradition out of which it emerged" and more amenable to the argument that cooperation "was the only economically viable means of preserving the independent producer and the family farm" (p. 33).

The embrace of cooperative enterprise might have seemed less ironic and more compatible with republicanism if Woeste had analyzed the raisin-packing sector in greater detail. A greater examination of the oppressive power of the packer-buying sector certainly would have made the organization of the raisin growers less objectionable. Woeste does note that the packers attempted to undermine CARC from its inception and that the "Big Five" raisin packers formed the " 'raisin committee' to finance federal legal action against the CARC," both by the DOJ and the FTC (arrogantly arguing that "Our attorneys are far and away superior to the Association's attorneys."). (142, 148) In addition, the packers consistently tried to undermine the CARC by luring farmers from the marketing cooperative. A more detailed discussion of the private raisin packers would have been useful and greater attention to the monopsony power of processors in other sectors would have made the farmer cooperative movement more understandable in general. Farmers would have seemed less grasping and the embrace of commodity marketing less ironic if Woeste had reserved more ink for the precarious economic position of farmers and the power of the processing sector.

The degree of irony is also linked to the nature and composition of farmer cooperatives, an issue that Woeste engages with particular verve. Some believed, following the Rochdale tradition, that "true" cooperatives would involve no capital stock and no "profits." One cooperative leader once praised a USDA model state cooperative incorporation bill "for clarifying the difference between a cooperative and a 'profit-making organization': 'In the former, it is operated for the mutual help of the members; in the latter, it is for the profit or advantage of the corporation itself' " (p. 105). Such views, as Woeste notes, were quickly "out of the mainstream," but at one time the existence of capital stock and profits was a part of the judicial analysis of the purpose of a cooperative, which played an important role in determining whether cooperatives restrained trade. The question became so important that state lawmakers began including statements of purpose in state cooperative statutes. The role of purpose and profits is still an issue in the current controversy over the applicability of securities law to farmer cooperatives.[7]

Although one might question certain themes in Woeste's book, one cannot contest its brilliant assessment of the legal environment in which cooperatives operated, the enormous amount of research that it represents, and its weighty contribution to our understanding of the law, economics, and politics of agriculture. In an age of narrow studies and academic over-specialization when questions of political economy are largely off the radar screen, Woeste has undertaken an ambitious study of a complex subject and succeeded.

Notes

[1]. Jim Chen, "The Potable Constitution," *Constitutional Commentary* 15 (Spring 1998): 1.

[2]. In re Grice, 79 F.627 (C.C.S.D. Tex. 1897).

[3]. Connolly v. Union Sewer Pipe Co., 184 U.S. 540 (1902).

[4]. Reeves v. Decorah Farmers' Cooperative Society, 160 Iowa 194 (1913).

[5]. Joseph G. Knapp, *The Rise of American Cooperative Enterprise* (Danville, IL: Interstate Printers and Publishers, 1969), at 12.

[6]. Michael Magliari, review of Woeste for H-California (June 1999) (arguing that the Grange and Alliance were critical of Rochdale).

[7]. See Jon K. Lauck and Edward S. Adams, "Farmer Cooperatives and the Federal Securities Laws: The Case for Non-Application," *South Dakota Law Review* 45 (Spring 2000): 62.

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