

REGENT UNIVERSITY LAW REVIEW

Volume 26

2013–2014

Number 2

FOREWORD: FOOD LAW AND ITS PLACE AT THE LEGAL ACADEMY

*Michael T. Roberts**

The invitation extended by the *Regent University Law Review* Symposium on *Emerging Issues in Food Law* invited prospective attendees to the symposium to “learn about laws that affect you—and what you eat—every day.”¹ Implicit in this invitation was the notion that if the measure of the importance of law is how it affects the lives of people on a daily basis, then food law is of paramount significance. To this end, the symposium presentations addressed a broad range of emerging issues, including food safety, the labeling of food products, the composition of food (biotechnology), and the effects of the modern diet (obesity and malnutrition) on consumers. The symposium also evaluated the legal tools that are used to govern the food system and deal with emerging issues, including government regulation, litigation, and private standards.

Although the symposium rightly focused on emerging issues, it should be recognized that food law is both old and new. From the beginning of recorded history, societies have sought to regulate the production, trade, and consumption of food. The modern food system has fundamentally transformed the production, composition, taste, availability, value, and appearance of food, the consequences of which raise novel health and societal issues of which “new” food law attempts to address. Historically and presently, food law is developed and applied specifically in response to problems and challenges that emerge in the food system (for example, food fraud, food safety outbreaks, allergy labeling, animal welfare, and obesity).

* Michael T. Roberts is the Executive Director of the Resnick Program for Food Law and Policy at UCLA School of Law.

¹ *Regent University Law Review Symposium*, REGENT L. SCH., http://www.regent.edu/acad/schlaw/student_life/studentorgs/lawreview/symposium.cfm (last visited Mar. 19, 2014).

In addition to dealing with problems in the food system, the development of food law also reflects societal values and perceptions of food. Notwithstanding the industrialization of food, the act of eating has never been, nor likely ever will be, a simple exercise of satisfying a basic physiological need. Culture has always mattered. Thus, the governance of food is shaped by cultural, political, and sociological norms articulated by consumers and communities, the force of which has intensified with growing interest in sustainability, nutrition, access to healthy food, localness, the right to certain information about food, the treatment of animals intended for food, farmland preservation, school lunch reform, urban agriculture, community gardens, social justice, farm worker rights, and food security. As evidenced by the symposium presentations, the cultural and commercial priorities of stakeholders in the food system are not always in sync, which gives rise to palatable tensions and divisive issues (for example, proposed mandatory labeling for genetically modified food, zoning rules for the production of backyard chickens, and proposed restrictions on sugar-added beverages, to name just a few) that make food law interesting.

The development of modern food law and its reframing of laws and norms requires food-law practitioners who are skilled and who understand the food systems. Lawyers who practice the traditional forms of food law—“food and drug law”² and “agricultural law”³—will better represent the interests of their stakeholder clients by understanding the issues raised by a constantly changing food system and the evolving norms and concerns in response to the changes. In addition to the “FDA” bar and agricultural law specialists, the food-law bar now is comprised of trial lawyers who engage in class action or other litigation involving food on issues not adequately addressed by regulation; government counsel

² The practice of food and drug law generally involves the representation of food enterprises engaged in the manufacturing, packaging, labeling, advertising, and distributing of food products. Many of the lawyers who focus on food and drug law are located in Washington, D.C., Chicago, and other large metropolitan areas. The practice of food law by these lawyers is mostly administrative law and is rich in its complexities.

³ The practice of agricultural law really took hold in the 1970s and 1980s, which included a period of economic hardship for farms and rural communities. See Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 935, 941–42 (2010). Agricultural law focuses on the producer of food and the inputs that go into the production of food. Lawyers who practice in this area are a vastly different group than food-and-drug lawyers. Agricultural law practitioners typically practice in rural areas and represent the interests of agriculture enterprises, including “[f]inancing the [o]wnership of [a]gricultural [l]and,” “[f]arm [l]eases,” “[w]arehouses,” “[o]perational [f]inancing,” “[a]nimals,” “[c]ommodity [f]utures [c]ontracts,” “[a]gricultural [c]ooperatives,” “[a]gricultural [e]mployment,” “[s]oil and [w]ater [m]anagement,” and “[f]armlands [p]reservation.” See *Summary of Contents* to KEITH G. MEYER ET AL., AGRICULTURAL LAW: CASES AND MATERIALS, at xxv–xxvii (1985).

who are increasingly being involved in city planning and public health issues on zoning of food deserts, community gardening, and farmers' markets, food-access issues of food trucks, public-health issues concerning nutrition programs and obesity, and even food and beverage taxes designed to change public consumption habits; and public-interest lawyers who represent advocacy groups, state and local food policy councils, pro-bono activities, and NGOs who have an interest in setting food policy.

To meet the challenges of this expansive food-law discipline, law schools are increasingly paying attention to food-law curriculum development and law and policy analysis. Recent examples of this effort include the Resnick Program for Food Law and Policy at UCLA School of Law and a Food Law and Policy Clinic and Food Law Lab at Harvard Law School. Food law and policy courses are now offered in law schools across the country.⁴ Even traditional law courses, including health law, environmental law, international law, public policy law, and intellectual law courses include components of food law and policy. The *Regent University Law Review* Symposium has played an important role in this educational movement on food law by recognizing the growing saliency of food law and by focusing attention on how law governs food from the field to the table. The challenge for the legal academy is to continue to develop food law, which, as evidenced by this symposium, the academy is well suited to accomplish.

⁴ The 2014 annual conference for the Association for American Law Schools featured a panel session titled "*Innovations in Teaching Food Law and Policy: Definitions, Fellowships, Clinics, and Local Food Initiatives.*" Schedule-at-a-Glance, Ass'n of Am. Law Sch. Annual Meeting (Jan. 2–5, 2014), <http://aals.org/am2014/Glance.pdf>.