

My name is Anthony Schutz, and I am from the University of Nebraska. Today, our subject (consistent with the overall theme of the AALS this year) is geared at the future of agricultural law. Today's panel is going to discuss some challenges facing or changes affecting agriculture law from a few different perspectives. . . .

By way of introduction, and to bring the three panelists together under our common theme, I'd like to talk for just a few minutes about the subject.

Over the years, I am sure the notion of "the future of agricultural law" has been the subject of many conferences. And I think we tend to watch closely for changes because of the importance of the agricultural sector to people's basic livelihoods. Agriculture's importance is evident in the breadth of legal subjects that come up in the course of studying agricultural law. Indeed, I am continually amazed at how much law there is in agriculture.

Today's challenges reach into nearly every area of agricultural law (from environmental regulation, to climate disruption, to land use, to rural development, to commercial law, to economic regulation, to international trade, to global poverty and hunger). One area of change that I find particularly interesting to think about is the onslaught of energy agriculture. And I think it helps bring our three panelists' talks together.

As we look to agriculture as an energy source, what changes will this bring? I think these changes (like many) can be grouped at two different levels.

The first is a sort of fundamental paradigm shift in the policy focus of agricultural law. For example, it may be that the traditional tools of supporting agriculture are not as relevant as they once were. In fact, the most important piece of legislation for agriculture that Congress has considered over the last six months may not be the farm bill. It may be the 2007 Energy Bill. On a policy level, what does this mean?

Food has often been the saving grace of agriculture—one justification for its differential treatment. Does this change when we think of agriculture as an energy provider? And if it does, what does that mean? Who are the winners and losers from such a paradigm shift?

The second sort of change that energy agriculture may bring are those more geared at what some may think of as the nuts and bolts of agricultural law (or, maybe, agricultural law as opposed to agricultural policy) (or the mundane as opposed to the sexy). What challenges will energy agriculture pose to existing legal regimes? If Professor Kershen were here, I'm sure he'd have much to say about technological change, transgenic crops, and the ways in which the need for such advances must change existing regulatory approaches to that subject.

These two categories, of course, aren't all that distinct. And I think they can be brought together if we think of the opportunities the future may hold for changes that have long been proposed by scholars. That

is, we may see an opportunity to change the law in ways that have historically been very difficult. One area where we can start to think about this is environmental regulation. Historically, the subject of agricultural environmental law has been the study of exceptions to command and control regulation, combined with incentivized approaches that tend to look a lot like polluters-get-paid approaches to agriculture's environmental harms. Professor Ruhl has, of course, been a key and important critic on this point.

The merits of agriculture's historic treatment aside, however, in the circumstance of this moment, we can begin to think about whether energy agriculture changes matters at a larger policy level in a way that is relevant to this lack of meaningful environmental improvements. One thing is fairly clear, our current energy policy has increased commodity prices. This has, in turn, given many crop farmers larger profit margins (though the real increase is difficult to figure out given complimentary increases to the prices paid by

farmers). This could, in turn, influence our willingness to impose costs on, or internalize the costs of, production agriculture.

Politically, change may be more likely too. Farmers may not look as much like food producers as they do energy provider. And if agriculture starts to resemble big oil more than it has in the past, then environmental regulation in command and control form may be possible where it wasn't before.

Of course, this possibility raises yet further challenges. Administration and enforcement of regulatory programs at the scale of crop production pose challenges at a program design level.

Today's three speakers are going to discuss topics relevant to these changes at both levels, possibly giving rise to the opportunity for change.

Prof. Hamilton (fresh from the Iowa caucuses, with hope and change on his mind) will discuss the future of biofuels and the limitations on corn-based ethanol.

Prof. Ruhl will talk about enhancing the multifunctionality of agricultural land uses by recognizing the importance of ecosystem services and implementing them at a program-design level.

Finally, Prof. Kelley will round out the discussion by addressing one of the greatest challenges facing the global population and the agriculture that serves it—water scarcity. Mr. Kelley's international experiences and observations will bring the breadth of this problem home.