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THE BEGINNINGS OF THE JOURNAL OF FOOD LAW & POLICY

*Michael T. Roberts**

INTRODUCTION: A FRONT RUNNER IN FOOD LAW AND POLICY SCHOLARSHIP

In the first sentence of the introduction to the inaugural edition of the *Journal for Food Law & Policy*, Margie Alsbrook, the founding Editor-in-Chief, and I, the founding faculty advisor, stated: “It is with great pride and pleasure that we present the inaugural issue of the *Journal for Food Law & Policy*.” In celebration of the *Journal’s* tenth anniversary, I am inclined to echo the same sentiment, but with the added proviso: “surprised!” I confess being gravely concerned ten years ago over the *Journal’s* survivability. Food law and policy was then barely in its formative stage. The nascent, social food movement, popularized in literature, media, and progressive circles, was just starting. For example, Michael Pollan’s best-seller, *The Omnivore’s Dilemma: A Natural History of Four Meals*, which galvanized tremendous interest in food policy and food studies, was published in 2006, one year following the *Journal’s* inaugural edition.¹ In short, the *Journal* was a novel, specialty law journal attempting to lead the way of a food law and policy movement that was just inching off the starting block. There was good reason to temper our optimism.

To my surprise and delight, however, the *Journal* has not only survived, it has emerged as a front-runner in scholarly publications focused on food law and policy.² From my point of view, the success of the *Journal*

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1. Michael Pollan, *THE OMNIVORE’S DILEMMA: A NATURAL HISTORY OF FOUR MEALS*, Penguin Press (2006).

2. See Baylen J. Linnekin & Emily M. Broad Leib, *Food Law & Policy: The Fertile Field’s Origins and First Decade*, 2014 WIS. L. REV. 557, 591 (2014) (recognizing the

is due to three factors. First, is the capable faculty leadership of Professor Susan Schneider, who is the Director of the Graduate Agricultural and Food Law Program and a seasoned leader and innovator in the teaching of agricultural and food law. I recall, shortly after a reception at the law school prior to my leaving in 2006, Professor Schneider promised me that she would watch over the *Journal*. She has more than kept her word, since then serving as its faculty advisor. Second are the tireless, devoted students at the University of Arkansas School of Law who as members of the *Journal* board and staff have solicited, edited, and published top-flight scholarly articles. Third is the remarkable interest and growth in the field of food law and policy in law schools and private practice.³

The aim of this short essay is to record the beginnings of the *Journal*. Although I failed to follow the admonishment by Professor Lonnie Beard⁴ in 2006 to memorialize the start of the *Journal* in writing, the advantage of recording the history now is that we have a sharper perspective of the *Journal's* significance, including the point that the beginnings of the *Journal* are integral to the start of food law and policy itself.

IN THE BEGINNING: AN IDEA

The *Journal* started with an idea formed through collaboration with colleagues and intense intellectual spadework. Soon after my start at the University of Arkansas School of Law as the Director of the National Agricultural Law Center, which at that time was an integral part of the law school, discussions commenced with colleagues about the research and events agenda for the Center and my own research and teaching focus. These discussions largely occurred over lunch at the university union dining suite and generally included Professor Schneider, the late Dean Richard Atkinson, Professor Chris Kelley (who then taught and continues to teach in the LL.M. program), and Harrison Pittman, a staff attorney for the Center, and other law faculty who would periodically join us. The discussions were lively, interesting, and supportive of the general concept of “food law and policy.” These discussions were indispensable to the shaping and refinement of what constituted food law and policy for purposes of the *Journal* and the overall justification of food law and policy as a discipline.

The concept of “food law and policy”—for me at least—was triggered by a class taught in the law school’s Graduate Agricultural Program by

Journal of Food Law & Policy as “the first scholarly publication focused entirely on the field of Food Law & Policy”).

3. See generally *id.*

4. Professor Beard was an early supporter of the *Journal* and served as its first faculty advisor, while I worked with him in the capacity as a faculty content advisor.

visiting Neil Hamilton, the Dwight D. Opperman Chair of Law, Professor of Law, and Director of the Agricultural Law Center at Drake Law School. I took the class when enrolled in the graduate program in 1999. The class was titled *Introduction to the Law of Food & Agriculture* and covered agriculture in the context of food systems. Delineating food from agriculture in evaluating food systems struck me as a novel approach to bridging agricultural law to traditional FDA-food law, both subject areas that have been treated as distinct academic fields in the legal academy and as distinct practice areas by the legal bar.⁵ This bridge provides a unique platform on which to address not only topics traditionally ascribed to FDA-food law and agricultural law, but also topics integral to food movement including: GMO labeling, nutrition, food waste, sustainability, new farmers, farmland preservation, school lunch reform, local food, food access, urban agriculture, farm bill reform, initiatives to create gardens and cooking classes in school, farm worker rights, nutrition labeling, obesity, hunger, animal welfare, and environmental issues.

Another critical collaboration that inspired the *Journal's* inception involved a trip to Paris, where I attended a European Food Law Conference. At the conference I was introduced to Professor Ferdinando Alibisinni, a law professor from Viterbo, who now heads up the European Food Law Center at the University of Tuscia.⁶ Professor Alibisinni, under the tutelage of Professor Luigi Costato, had migrated in his academic focus from European Agricultural Law to European Food Law. In their book, *European Food Law*, these two scholars describe a discipline “moving toward an integrated and systematic approach” that brings together local, national, and European regulators and administrators to an emerging, “new legal model, in which rules coming from a Community level and rules coming from national and local level are strictly linked in an unitary model of European Food Law.”⁷ Our conversation prompted a consciousness for me that a U.S. legal framework, while very different in many respects than the EU approach, could be identified for both traditional food law—for example, the 1938

5. I deal with this distinction and the historic treatment of FDA-food law and agricultural law in a treatise to be published this year by Cambridge University Press, titled *Food Law in the United States*. See also 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, 946 (2010) (calling for a convergence of sorts between agriculture law and food law: a food-based agricultural law that reconciles the interest of farmers with the public good of society, advancing sustainability, food safety, health, and nutrition).

6. In 2004, a year prior to the first edition of the *Journal*, the Italian Association of Food Law was created. Luigi Costato & Ferdinando Alibisinni, EUROPEAN FOOD LAW XI (2012).

7. *Id.* at X.

Federal Food, Drug, and Cosmetic Act⁸—and new forms of food law outside the federal food-acts regime—state and municipal laws, litigation, private standards, and voluntary standards that govern and influence policy for public health, labeling, urban agriculture, and local food initiatives. To reiterate, this framework is not by any stretch a “unitary model” of food law; in fact, the framework is fragmented to a fault.⁹ Notwithstanding the disjointedness of the framework, its identification and the provision of a food law and policy legal journal allow for a purpose and space where innovative legal and policy proposals can be presented that address the consequences of a modern food system that is unlike anything the world has experienced.

The *Journal* has performed well in its role of serving as an intellectual platform for the vetting of these innovative proposals. Representative published articles that illustrate this accomplishment include titles, such as *A Cost-Benefit Analysis of Sugary Drink Regulations in New York City*;¹⁰ *A Bittersweet Deal for Consumers: The Unnatural Application of Preemption to High Fructose Corn Syrup Labeling Claims*;¹¹ *The Market for Drug-Free Poultry: Why Robust Regulation of Animal Raising Claims is the Right Prescription to Combat Antibiotic Resistance*;¹² *Fattening Food: Should Purveyors of Fast Food be Required to Warn? A Call for a New Tort*;¹³ and *Labeling of Credence Attributes in Livestock Production: Verifying Attributes Which Are More Than “Meet the Eye.”*¹⁴ In addition to scholarly articles, essays by leaders in food policy,¹⁵ book reviews,¹⁶ and proceedings from food policy conferences,¹⁷ have populated *Journal* editions, adding valuable insights and information.

8. Federal Food, Drug, and Cosmetic Act (FDCA), Ch. 675, § 201(f), 52 Stat. 1040, 1040 (1938) (current version at 21 U.S.C. § 321(f)).

9. See generally Testimony of Lawrence J. Dyckman, Director, Natural Resources and Environment, GAO, before the Civil Service Subcommittee, Senate Governmental Affairs Committee, U.S. Senate in GAO, FEDERAL FOOD SAFETY AND SECURITY SYSTEM: FUNDAMENTAL RESTRUCTURING IS NEEDED TO ADDRESS FRAGMENTATION AND OVERLAP 17, GAO-04-588T, (Wash., D.C., Mar. 30, 2004).

10. Shi-Ling Hsu, 10 J. FOOD L. & POL'Y 73, 74 (2014).

11. Josh Ashley, 6 J. FOOD L. & POL'Y 235, 236 (2010).

12. Dorinda L. Peacock, 9 J. FOOD L. & POL'Y 223 (2013).

13. Charles E. Cantu, 2 J. FOOD L. & POL'Y 39 (2006).

14. Nicole J. Olynk et. al., 5 J. FOOD L. & POL'Y 181, 182 (2009).

15. See e.g., Nancy Bryson, *An Essay: United States Food and Agriculture in the 21st Century: Is USDA Still Relevant* 1 (2006).

16. See e.g., Alison Peck, *Cows v. Capitalists: Visions of A Post-Carbon Economy* Simon Fairlie, *Meat: A Benign Extravagance* (Chelsea Green Publishing 2010), 8 J. FOOD L. & POL'Y 145 (2012).

17. See e.g., Tony Corbo, *Reforming U.S. Food Safety Policy: A Consumer Advocacy Perspective*, 8 J. FOOD L. & POL'Y 193 (2012) (remarks from the National Food Policy Conference).

THE STEPS

Once the concept of “food law and policy” crystalized, we proceeded to explore the prospects of developing a specialty law journal focused on this field. The first step was to research the development and role of specialty law journals.¹⁸ We evaluated the merits and challenges typically faced by specialty law journals, from opportunities for students for editing experience and faculty for publication space to droughts of manuscript submissions and lack of financial and faculty support.¹⁹

As events unfolded, the next step of making a case to the law faculty and earning their approval turned out to be enjoyable and rewarding. We stressed to faculty that the *Journal* would be the first student-edited journal in the nation exclusively devoted to the study of food law and policy, that a second journal published by the law school would provide its student contributors with invaluable experience, and that the *Journal* would complement the law school’s long-standing and respected Graduate Program in Agricultural Law. In addition to Dick Atkinson, Susan Schneider, and Lonnie Beard, other faculty who were especially encouraging, included Carol R. Goforth, Associate Dean for Academic Affairs; Robert B. Leflar, member of the faculty *Journal* committee; and Steve Sheppard, a constant advocate and supporter of the *Journal* and the emerging food law and policy field in general.²⁰

Following faculty approval, we set out to select a student editor who would exert strong leadership and academic excellence. Having received permission to recruit a candidate from the Arkansas Law Review staff, we were fortunate enough to convince Margie Alsbrook, a highly capable and energetic second-year law student, to be the founding Editor-in-Chief for the *Journal*. Margie and I then worked side by side in all aspects of the *Journal*’s launch, from designing the jacket, setting up the editorial board, finding office space, determining rules and policies, and soliciting articles and contributions for the first editions. One endearing memory about these tasks is the visits to Dean “Dick” Atkinson to get his input on the preferred

18. See Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813 (1999).

19. See Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 39-40 (1996).

20. Professor Steve Sheppard, who has long been active in the promotion of legal education and legal publications, later served as the faculty founder and advisor to the *Journal of Islamic Law and Culture*, which became the law school’s third journal of law. He now Dean of St. Mary’s University School of Law.

design.²¹ In addition to Margie Alsbrook, the start-up board for the *Journal* was an exceptionally dedicated and talented crew that consisted of Kelly Degostin (Executive Editor), Reagan L. Madison (Articles Editor), and Adrienne Kincaid Murphy and Jason Milne (Note and Comment Editors). It was personally satisfying for me to witness in a start-up journal the strengthening of student bonds through camaraderie and teamwork.

Another important step was to confer with Professor Hamilton to ensure that the *Journal* could co-exist with the *Drake Journal of Agricultural Law*, first published in 1996. Any concerns in approaching Professor Hamilton were quickly dispelled when he expressed strong support for the *Journal* and even kindly offered to publish an essay in the first edition, titled *Food Democracy II: Revolution or Restoration?*,²² which is now part of a trilogy of articles by Hamilton that explore how democratic tendencies expressed by a “desire for better food, more information and choices, and preference for local action and personal involvement shape a more sustainable food future.”²³

A final step was to convince Peter Barton Hutt, former General Counsel to the U.S. Food and Drug Administration and a prominent practitioner, teacher, and historian of food law, to write the introductory essay for the inaugural edition, titled *Food Law & Policy: An Essay*.²⁴ There was a rush of excitement and relief when Hutt called from Disney World in Florida, where he was celebrating the 90th birthday of his mother, to announce that he would write the essay. I suspect that Peter calculated it was easier to write the essay than to continue to respond to my gentle, but dogged entreaties. In his unique, indomitable style, Hutt starts his essay with a bold stroke on the importance of food: “Food has been the driving preoccupation of humans since the dawn of evolution.”²⁵ Hutt concludes his essay by connecting this premise to the endurability of food law and policy: “Because of the central importance of food in all of our lives, food law and policy is a subject that will never become obsolete.”²⁶

21. Dean Atkinson, a remarkably kind and effective leader, passed away during his tenure as Dean of the University of Arkansas School of Law in 2006. See A Tribute to Richard B. Atkinson, Arkansas Law Record 2-10 (2006), available at <http://law.uark.edu/documents/ArkansasLawRecord2006Final.pdf>.

22. Neil D. Hamilton, 1 J. FOOD L. & POL'Y 13 (2005).

23. Neil D. Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117, 118 (2011). See also Neil Hamilton, *Essay-Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9 (2004).

24. Peter Barton Hutt, 1 J. FOOD L. & POL'Y 1 (2005).

25. *Id.* at 1.

26. *Id.* at 11.

The *Journal* was initially housed in the basement of the now renovated Davis Hall, located across the street from the law school at the northeast corner of Garland Avenue and Maple Street. Although the space was not connected to the law school, it had the advantage of being directly downstairs from the National Agricultural Law Center, which provided a convenient pathway between my office and the *Journal* office. Having ample room for tables, chairs, and workstations, the office had an open, friendly feel to it. I recall fondly being summoned downstairs to the *Journal* office during the first year to counsel and review submitted articles, develop rules and protocols, and offer encouragement.

UNIQUE FEATURES

I am especially pleased that two unique features incorporated in the inaugural edition for the *Journal* are still in tact. The first feature is separate food law updates for the U.S. and EU. Recognizing the globalness of the modern food systems, these updates have served an invaluable role in keeping scholars and practitioners abreast of the world's leading food regulatory systems. At the time we contemplated a third update—China or Asia Food Law Update—but concluded that this additional coverage would be too unwieldy to manage from the start. I am as pleased to report that starting now in forthcoming editions I will publish with the *Journal* an annual China Food Law Update, as I have developed over the years a special interest as an academic and consultant in the China food regulatory system.

Another key feature for the *Journal* was the *Excellence in Writing Award* sponsored by Arent Fox PLLC, in honor of former U.S. Senator Dale Bumpers, who served and continues to serve as counsel at the firm. The award, in the form of a \$1,000 cash prize, is presented each year to the outstanding student article published by the *Journal*. We were excited about the prospects of this award, given Senator Bumper's long and distinguished career in the U.S. Senate and as Governor of Arkansas, his tireless advocacy of agriculture and food in Arkansas, and his commitment to education and scholarship. The arrangements for the award were settled following an initial meeting with Senator Bumpers at his law office in Washington D.C., subsequent negotiations with his law partners, and then a formal agreement executed between the law school and the firm.

A BRIGHT FUTURE

From its tenuous start as a specialty journal in a new, emerging field of law, the *Journal for Food Law & Policy* has secured its position as a leading platform for legal scholarship and innovative thought on food law and policy. Secure in this role, the *Journal* has a bright future. First Amendment issues over the marketing of food to children; the affects of climate change on food production; the role of technology in the ever-changing composition of food product; the continued epidemic of obesity; and concerns over food security, food sovereignty, and food equity are examples of food issues that exemplify the breadth of present and future food law and policy issues. My early concerns about the survivability of the *Journal* have completely vanished, as I am confident that these issues, as well as future unforeseen issues on food law and policy, will occupy scholars and *Journal* students for many years. So, here is wishing the *Journal* a happy 10th anniversary and many more to come.