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Corporate Farming Statutes

by

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CORPORATE FARMING STATUTES

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*Ill fares the land, to hastening ills a prey,
Where wealth accumulates, and men decay;
Princes and lords may flourish, or may fade;
A breath can make them, as a breath has made;
But a bold peasantry, their country's pride,
When once destroy'd can never be supplied.¹*

INTRODUCTION

Statutes which restrict the corporate ownership and operation of farms are a recent manifestation of the traditional suspicion with which corporate ownership of real property has been viewed. This article will discuss the context in which corporate farming statutes have been enacted, will survey the pattern of restrictions which they impose, will consider briefly whether such laws are likely to be effective and finally, will suggest considerations which should be included in future decision-making with respect to these statutes.

I. HISTORICAL CONTEXT: CORPORATE LAND OWNERSHIP AND FARM SIZE

A. RESTRICTION ON CORPORATE OWNERSHIP OF REAL ESTATE

From at least the time of the Magna Carta, English law displayed a wariness of corporate ownership or control of real property.

IT shall not be lawful from henceforth in any to give his lands to any religious house, and to take the same land again, to hold of the same house; nor shall it be lawful to any house of religion so to take the lands of any to deliver the same land to

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1. O. Goldsmith, "The Deserted Village" lines 51-56 (1770).

him. If any from henceforth so give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.²

The evil at which this provision was aimed was the loss of feudal obligations by a lord which might occur when the lord's undertenant made a gift of the tenant's estate to a religious "corporation." Such a gift would terminate any temporal obligations (including rents and services) owed to the lord. Subsequently, the religious house could convey the title back to the freeholding tenant, in exchange for certain spiritual "obligations."³

The statute *Quia Emptores*⁴ was enacted in 1290 to protect the feudal lords from deprivation of incidents resulting from gifts by tenants to religious corporations. This ended grants in fee simple by subinfeudation and required that land be granted to be held directly of the lord.⁵ In succeeding centuries, corporate ownership of real property was further restricted. By Blackstone's time, he was able to say of corporations:

[B]y a great variety of statutes, their privilege even of purchasing from any living grantor is greatly abridged; so that now a corporation, either ecclesiastical or lay, must have a license from the king to purchase, before they can exert that capacity which is vested in them by the common law: nor is even this in all cases sufficient. These statutes are generally called the statutes of *mortmain*; all purchases made by corporate bodies being said to be purchases in mortmain, *in mortua manu*: for the reason of which appellation sir Edward Coke offers many conjectures; but there is one which seems more probable than any that he has given us: viz. that these purchases being usually made by ecclesiastical bodies, the members of which (being professed) were reckoned dead persons in law, land therefore, holden by them, might with great propriety be said to be held *in mortua manu*.⁶

2. Magna Carta (1225), c. 36.

3. W. SWINDLER, *MAGNA CARTA: LEGEND AND LEGACY* at 344 (1965). See also T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* at 541 (5th ed. 1956).

4. 18 Edward I: Statute of Westminster III (1290).

5. S. MILSOM, *HISTORICAL FOUNDATIONS OF THE COMMON LAW* at 97-98 (1969). See also W. SWINDLER, *supra* note 3, at 326-27.

6. I W. BLACKSTONE, *COMMENTARIES* *466-67 (footnotes omitted). Blackstone assumes that the common law allowed corporate ownership.

We before observed that it was incident to every corporation, to have a capacity to purchase lands for themselves and successors: and this is regularly true at the common law. But they are excepted out of the statute of wills; so that no devise of lands to a corporation by will is good: except for charitable uses, by statute 43 Eliz. c.4.

Id. at 466 (footnotes omitted). He acknowledges, however, that under the civil law, "a corpo-

Thus, the mortmain acts attempted to restrict transfer of lands to certain corporations. For example, the statute 9 Geo. II, c. 36 provided that lands should not be given to charities unless certain requirements were met.⁷ As Blackstone notes, the statutes of mortmain restricted not only the more prevalent religious corporations, but also lay corporations from taking and holding lands without license from the crown or from parliament.⁸

The English statutes of mortmain were not regarded as in force in American jurisdictions.⁹ However, some states eventually did adopt provisions in their constitutions or statutes which, like the mortmain acts, regulated grants of land to corporations.¹⁰ Several state constitutional provisions restricted the power of corporations to take and hold land through limitation on the size of their holdings, the length of their holdings, or simple prohibition on grants of real property to them.¹¹ Most of these constitutional restrictions prohibited corporations from owning real estate for noncorporate purposes.¹² Thus, as courts gave broader and broader readings to corporate purpose clauses, these restrictions were gradually eroded.¹³ Furthermore, states generally allowed incorporation for purposes requiring ownership of real property, including the purpose of engaging in agriculture.¹⁴

ration was incapable of taking lands, unless by special privilege from the emperor: *collegium, si nullo speciali privilegio subnixum sit, haereditatem capere non posse, dubium non est. Cod. 6.24.8.*" *Id.* at 467 n.y.

7. II W. BLACKSTONE, COMMENTARIES *273-74.

8. 6A W. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 2795, at 251 (rev. perm. ed. 1979). As Blackstone implies, the actual result of this prohibition may not have been so much to restrict corporate ownership as to make prevalent the practice of paying fees to the crown by corporations which wanted to hold real property. S. MILSOM, *supra* note 5, at 173.

9. 6A W. FLETCHER, *supra* note 8, at 251. *See also* W. SWINDLER, *supra* note 3, at 345, suggesting that this was true at least in part because land was not the scarce commodity in America that it had been in England.

10. W. SWINDLER, *supra* note 3, at 345. *See also* Note, *Corporations—Restrictions on Holding Real Estate—Interpretation of Michigan's Constitutional Restriction*, 47 MICH. L. REV. 970 (1949), whose author remarks that Michigan's constitutional restriction was based upon an "inherent distrust of corporations. . . . This distrust was based principally upon the monopolistic tendencies of corporations. . . . [T]he distrust of corporate power still existed during the middle of the nineteenth century when the Michigan constitutional limitation was first adopted." *Id.* at 971 (citations omitted).

11. 6A W. FLETCHER, *supra* note 8, at 251-53.

12. *See, e.g.*, KY. CONST. § 192; MICH. CONST. art. XII, § 5; OKLA. CONST. art. XXII, §§ 1, 2; S.D. CONST. art. XVII, § 7.

13. Note, *Corporations—Restrictions on Holding Real Estate—Interpretation of Michigan's Constitutional Restriction*, 47 MICH. L. REV. 970 (1949).

14. *See, e.g.*, *LeForce v. Bullard*, 454 P.2d 297 (Okla. 1969). The Oklahoma Constitution

B. SIZE LIMITATIONS FOR AGRICULTURAL HOLDINGS

Americans have debated the proper size of agricultural holdings since colonial times.¹⁵ Initially, this discussion devoted little attention to corporate ownership,¹⁶ but rather considered whether natural persons should own agricultural lands in large or small tracts. In the New England colonies, farms remained relatively small and were worked by their owners.¹⁷ In the South, however, with different crops and the availability of slave labor, much larger land holdings were economically feasible.¹⁸ Jeffersonian agrarians argued that every citizen should have the chance to acquire and cultivate land, and that ownership of large tracts encouraged creation of undesirable monopoly power.¹⁹ Early policies of the United States government reflected this desire to make the public lands available for purchase by the common man, though this aim sometimes conflicted with the desire to dispose of the public lands in ways that generated needed revenue for the government,²⁰ or with the program of nineteenth century land grants to the railroads to promote construction of a national transportation network.²¹

The Homestead Act of 1862²² provided that settlers could acquire 160 acre farms in exchange for filing a claim, paying a small fee, and living on the land for five years. This Act embodied an ideal that farms would remain relatively small, and that they would

prohibits corporate ownership of rural real estate "except such as shall be necessary and proper for carrying on the business for which it was chartered or licensed." OKLA. CONST. art. XXII, § 2. In *LeForce*, the Oklahoma Supreme Court decided that corporations could be formed in Oklahoma for the purpose of engaging in the business of farming and ranching and that corporations with such purpose have the power to hold rural real estate. 454 P.2d at 301. For a brief discussion of the impact of this case, see Note, *An Act Relating to Corporations; Prohibiting Farming or Ranching Business Corporations With Certain Exceptions*, 8 TULSA L.J. 151 (1972). See also TEX. BUS. CORP. ACT ANN. art. 1302-4.01 (Vernon Supp. 1979).

15. See generally P. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT (1968).

16. Until 1780 colonial legislatures had granted charters to only seven business corporations. M. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780-1860, at 112 (1977).

17. Taylor, *Public Policy and the Shaping of Rural Society*, 20 S.D. L. REV. 475 (1975).

18. Though not uniformly desired. For example, as early as 1732 the London-based trustees of the colony of Georgia, concerned about the development of large landholdings and the use of slave labor in other Southern colonies, attempted to place a 500 acre limit on land ownership. *Id.* at 477.

19. See generally P. GATES, *supra* note 15. Jefferson believed: "Those who labor in the earth are the chosen people of God. . . ." T. JEFFERSON, NOTES ON THE STATE OF VIRGINIA Query XIX, at 244 (3rd. ed. Newark 1801).

20. P. GATES, *supra* note 15.

21. *Id.* at 341 *et seq.*

22. Ch. 75, 12 Stat. 392 (1862) (repealed 1891).

be worked by those who owned them.²³ The Act did not guarantee that farm size would stay small—for one thing, government control over size was limited to the five-year period for which settlers were required to live on the land.²⁴

The National Reclamation Act of 1902²⁵ attempted to provide a longer-lived assurance that new farms would be small and owner-occupied.

No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land

...²⁶

As with the Homestead Act, the National Reclamation Act did not prove to be a long-lasting guarantor of dispersed ownership of agricultural lands.²⁷

Although twentieth century congressional enactments have occasionally professed to be motivated by the notion that small “family farms” are preferable to large farms, the effect of most federal legislation in this century has been to encourage larger farms. Federal programs for research, credit, price support and production stabilization have tended to favor large-scale agriculture.²⁸ Of course, movement to larger farm size is not solely a result of government agricultural policy. Technological developments, financing and marketing efficiency, and inflation, especially of land prices, have combined with government policy to encourage increased farm size.²⁹ Recent statistics show the trend continuing unabated. Between 1950 and 1978, the number of farms in the United States decreased from 5,648,000 to 2,680,000, while the average farm size

23. P. GATES, *supra* note 15, at 393-99. See also Taylor, *supra* note 17, at 480.

24. Taylor, *supra* note 16, at 480-81.

25. Ch. 1093, § 5, 32 Stat. 389 (1902) (current version at 43 U.S.C. § 431 (1976)).

26. 43 U.S.C. § 431 (1976).

27. The acreage limitations and residency restrictions of the Act were not always strictly enforced. Whether these requirements should be met has been debated again recently with new vigor, partly as a result of litigation seeking their enforcement. *United States v. Imperial Irrigation Dist.*, 559 F.2d 509 (9th Cir. 1977), *modified*, 595 F.2d 524 (9th Cir. 1979), *rev'g* 322 F. Supp. 11 (S.D. Cal. 1971), *vacating* 352 F. Supp. 1300 (S.D. Cal. 1972), *appeal pending*.

28. See generally Heady, *Public Policies in Relation to Farm Size and Structure*, 23 S.D. L. REV. 608 (1978).

29. SENATE COMM. ON AGRICULTURE, NUTRITION, AND FORESTRY, 96TH CONG., 1ST SESS., STATUS OF THE FAMILY FARM at 23-33 (Comm. Print 1979) [hereinafter cited as FAMILY FARM REPORT].

increased from 213 acres to 400 acres.³⁰ This development has heightened, or perhaps reawakened concern that corporate ownership of agricultural real estate is, in a way, as perilous to small, owner-operated farms in the twentieth century, as it was to the lords' incidents in the thirteenth century.³¹ Thus, some state legislatures have attempted to design restrictions on corporate ownership and/or control of agricultural land with the same sort of protective intent that prompted the mortmain statutes of centuries ago.

Enactment of such restrictions is not wholly a recent development.³² The agricultural depression experienced in the American mid-continent in the 1920's provided impetus for some state restrictions on corporate involvement in agriculture.³³ The general drop in farm income forced many farmers to mortgage their lands. As income remained low, loan payments could not be met and foreclosures on farms occurred. Often, these foreclosures were by corporations, whose takeovers of farms antagonized local populations. Such forced transfer of farm ownership seems to have been largely responsible for the 1932 enactment of North Dakota's "Corporate Farming Law."³⁴ At this time, there were also some substantial failures of corporations engaging in agriculture which caused further doubts about whether farming was best conducted in the corporate form and prompted restrictive legislation.³⁵ While North Dakota enacted a prohibition on corporate ownership, Kansas restricted corporations from engaging in certain kinds of produc-

30. *Id.* at 9.

31. The concern, while widespread, has been evoked without abundant data showing that there is any definite causal relationship between corporate farming and the trend toward larger farms. See note 189 *infra*.

32. See, e.g., text accompanying notes 9-11 *supra*. At least some of the enactments discussed there seem to have been motivated by a desire to keep certain corporations from engaging in agriculture.

33. See note 34 *infra*.

34. N.D. CENT. CODE §§ 10-06-01 to -06 (1960). See McElroy, *North Dakota's Anti-Corporate Farming Act*, 36 N.D. L. REV. 96 (1960); O'Keefe, *The North Dakota Anti-Corporate Farming Act: A Dissenting Opinion*, 41 N.D. L. REV. 333 (1964); Note, *An Analysis of House Bill 782: The Latest Attempt to Repeal North Dakota's Ban on Corporate Farming*, 44 N.D. L. REV. 255 (1967) [hereinafter cited as *An Analysis of H.R. 782*]. By 1933, seventy-eight percent of all Land Bank Loans in North Dakota were delinquent. One-third of North Dakota's farmers lost their farms between 1930 and 1944. Corporations owned almost ten percent of the agricultural land in North Dakota by 1939. *Id.* at 256-57.

35. Harl, *Farm Corporations—Present and Proposed Restrictive Legislation*, 25 BUS. LAW. 1247 (1970). The demise of the Wheat Farming Co. in Kansas was partly responsible for legislation which prohibited corporations from producing certain crops or dairy products in that state. *Id.* at 1248-50. See also *State of Kansas, ex rel. Boynton v. Wheat Farming Co.*, 137 Kan. 697, 22 P.2d 1093 (1933).

tion,³⁶ and other states adopted acreage limitations on corporate owners of farm lands³⁷ or restricted incorporation of some combinations of farm and nonfarm businesses.³⁸

In recent years, more states have enacted statutes which regulate the corporate ownership and/or control of agricultural real estate. Currently, jurisdictions with corporate farming statutes include: North Dakota (1932),³⁹ Oklahoma (1971),⁴⁰ Kansas (1973),⁴¹ Minnesota (1973),⁴² Wisconsin (1973),⁴³ South Dakota (1974),⁴⁴ Iowa (1975),⁴⁵ Missouri (1975),⁴⁶ and Nebraska (1975).⁴⁷ Though different state statutes⁴⁸ contain various approaches to the restriction of corporate control of agricultural land or production, they seem to share a common objective: the protection and encouragement of smaller, owner-operated farms through limitations on some kinds of "larger" farms.

Several statutes explicitly state the reasons for their enactment. For example, South Dakota's law speaks of the "importance of the family farm to the economic and moral stability of the state" and states that "the existence of the family farm is threatened by conglomerates in farming."⁴⁹ Nebraska's legislature "recognizes and

36. See note 68 *infra*.

37. For example, until 1977, Minnesota law provided that corporations organized for and engaged in farming could not acquire more than 5,000 acres of land. MINN. STAT. ANN. § 500.22(3) (West Supp. 1979) (repealed 1977). Until 1963, Mississippi forbade corporations to hold and cultivate for agricultural purposes more than 12,500 acres in any one year. MISS. CODE ANN. § 5329 (1942) (repealed 1962). West Virginia still imposes a one-time tax of five cents per acre on corporate land holdings over 10,000 acres. W. VA. CODE § 11-12-75 (1974). See Harl, *supra* note 35, at 1250-51.

38. TEX. BUS. CORP. ACT ANN. art. 2.01(B)(3)(a) (Vernon Supp. 1979).

39. N.D. CENT. CODE §§ 10-06-01 to -06 (1976).

40. OKLA. STAT. ANN. tit. 18, §§ 951-956 (West Supp. 1979).

41. KAN. STAT. ANN. §§ 17-5901 to -5902 (1974).

42. MINN. STAT. ANN. § 500.24 (West Supp. 1979).

43. WIS. STAT. ANN. § 182.001 (West Supp. 1979).

44. S.D. CODIFIED LAWS ANN. §§ 47-9A-1 to -23 (Supp. 1979).

45. IOWA CODE ANN. §§ 172C.1 to .15 (West Supp. 1979).

46. MO. ANN. STAT. § 350.015 (Vernon Supp. 1980).

47. NEB. REV. STAT. § 76-1501 (1976).

48. For a review of the different states with such statutes as of mid-1975, see F. MORRISON & K. KRAUSE, STATE AND FEDERAL LEGAL REGULATION OF ALIEN AND CORPORATE LAND OWNERSHIP AND FARM OPERATION (U.S. DEP'T OF AGRICULTURE, AGRICULTURAL ECONOMIC REPORT No. 284, 1975). A more recent, though more cursory, review is found in Reynolds, *State Statutory Restrictions on Alien and Corporate Ownership of United States Agricultural Land*, 1 AGRICULTURAL L.J. 415 (1979).

49. S. D. CODIFIED LAWS ANN. § 47-9A-1 (Supp. 1979). See discussion in Comment, *The South Dakota Family Farm Act of 1974: Salvation or Frustration for the Family Farmer?*, 20 S.D. L. REV. 575 (1975).

declares an intent to nurture the free enterprise system, to provide for the continued existence of the family farm against potential monopolization of the agricultural industry, and to protect against alien ownership of Nebraska agricultural land."⁵⁰ Iowa's statute aims "to preserve free and private enterprise, prevent monopoly, and protect customers."⁵¹ Minnesota enacted a corporate farming statute "to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family."⁵²

II. PATTERNS OF CORPORATE FARMING REGULATION

A. CURRENT RESTRICTIONS

North Dakota's "Corporate Farming Law" remains the strictest restriction of corporate ownership or control of agricultural production.⁵³ It prohibits all corporations,⁵⁴ except certain cooperative corporations,⁵⁵ "from engaging in the business of farming or agriculture."⁵⁶ The statute also requires all corporations to dispose of real estate which is "used or usable for farming or agriculture"⁵⁷ within ten years of acquisition.⁵⁸ Since its enactment in 1932, this statute has been the subject of debate and attempted repeals.⁵⁹ The most recent attempted repeal by the legislature was overturned by voter referendum.⁶⁰

The more recently enacted state corporate farming statutes, while less restrictive than North Dakota's, follow a somewhat similar pattern. Corporations are generally forbidden to farm or own agri-

50. NEB. REV. STAT. § 76-1501 (1976).

51. IOWA CODE ANN. § 172C.2 (West Supp. 1979).

52. MINN. STAT. ANN. § 500.24 subd. 1 (West Supp. 1979).

53. This statute was enacted in 1932 as a result of the voter initiative process. See Note, *An Analysis of H.R. 782*, *supra* note 34, at 256.

54. N.D. CENT. CODE § 10-06-01 (1976).

55. N.D. CENT. CODE § 10-06-04 (1976) provides: "Nothing in this chapter shall be construed to prohibit cooperative corporations, seventy-five per cent of whose members or stockholders are actual farmers residing on farms or depending principally on farming for their livelihood, from acquiring real estate and engaging in cooperative farming or agriculture."

56. *Id.* § 10-06-01.

57. *Id.* § 10-06-02.

58. *Id.* § 10-06-03.

59. See McElroy, *supra* note 34; O'Keefe, *supra* note 34; Note, *An Analysis of H.R. 782*, *supra* note 34.

60. House Bill 782, which referred to voter referendum, was defeated in the general election of November 8, 1968. Harl, *supra* note 35, at 1249-50.

cultural land in Minnesota,⁶¹ Missouri,⁶² Oklahoma,⁶³ South Dakota,⁶⁴ and Wisconsin.⁶⁵ Iowa adopted a five-year moratorium on new ownership or operation of farm land by corporations which was made permanent as of January 1, 1980.⁶⁶ Iowa has further imposed a permanent prohibition on ownership or control of feedlots by beef or pork processors.⁶⁷ The Kansas statute provides that "[n]o corporation shall directly or indirectly engage in the agricultural or horticultural business" with respect to certain crops.⁶⁸ "Farming" and "agricultural land" are defined broadly by the statutes.⁶⁹

While corporations appear to be the primary target, a few of the statutes apply their prohibitions not only to corporations, but also to certain trusts.⁷⁰ In 1978, Oklahoma extended its restrictions to cor-

61. MINN. STAT. ANN. § 500.24 subd. 3 (West Supp. 1979) provides: "After May 20, 1973, no corporation shall engage in farming; nor shall any corporation, directly or indirectly, own, acquire or otherwise obtain an interest, whether legal, beneficial or otherwise, in any title to real estate used for farming or capable of being used for farming in this state."

62. MO. ANN. STAT. § 350.015 (Vernon Supp. 1980).

63. OKLA. STAT. ANN. tit. 18, §§ 951, 955 (West Supp. 1979).

64. S.D. CODIFIED LAWS ANN. §§ 47-9A-1, -3 (Supp. 1979).

65. WIS. STAT. ANN. § 182.001 (West Supp. 1979) states: "No corporation or trust may own land on which to carry on farming operations. . . ." See discussion in Comment, *Proposed Anticorporate Farm Legislation*, 1972 WIS. L. REV. 1189 (1972).

66. IOWA CODE ANN. § 172C.4 (West Supp. 1979) stated: "For a period of five years from August 15, 1975 no corporation or trust, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust shall, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state." The language: "For a period of five years from August 15, 1975" has been deleted, effective January 1, 1980. 1979 Iowa Legis. Serv. 96.

67. IOWA CODE ANN. § 172C.2 (West Supp. 1979) states:

In order to preserve free and private enterprise, prevent monopoly, and protect consumers, it is unlawful for any processor of beef or pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner, to own, control, or operate a feedlot in Iowa in which hogs or cattle are fed for slaughter.

68. "No corporation shall directly or indirectly engage in the agricultural or horticultural business of producing, planting, raising, harvesting or gathering of wheat, corn, grain sorghums, barley, oats, rye or potatoes or the milking of cows for dairy purposes:" KAN. STAT. ANN. § 17-5901(a) (1974).

69. For example, the Iowa statute says "agricultural land" means land suitable for farming. IOWA CODE ANN. § 172C.1(5) (West Supp. 1979). "Farming" means "the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock." *Id.* § 172C.1(6). See also MINN. STAT. ANN. § 500.24 subd. 2 (West Supp. 1979); S.D. CODIFIED LAWS ANN. § 47-9A-2 (Supp. 1979); WIS. STAT. ANN. § 182.001(3) (West Supp. 1979).

70. Iowa's restriction applies to a trust other than a "family trust, authorized trust, or testamentary trust." IOWA CODE ANN. § 172C.4 (West Supp. 1979). See also WIS. STAT. ANN. § 182.001 (West Supp. 1979).

porate and noncorporate associations generally.⁷¹ Iowa imposes its agricultural reporting requirement on entities other than corporations.⁷²

B. "FAMILY FARM CORPORATION" AND "AUTHORIZED FARM CORPORATION" EXEMPTIONS

The newer corporate farming statutes seek to protect family farms and aid smaller owner-operated farms generally.⁷³ Thus, they frequently exempt from their restrictions types of corporations which might be used for small farm ownership and operation.⁷⁴ Exemptions for "family farm corporations" are found in the statutes of Minnesota,⁷⁵ South Dakota,⁷⁶ Iowa,⁷⁷ and Missouri.⁷⁸ Such corporations must have a majority of shares held by—and a majority of shareholders who are—family members.⁷⁹ Some statutes require that at least one of the family members reside on or actively operate the farm,⁸⁰ and a few prohibit corporate shareholders.⁸¹ Iowa requires that the shareholders of a "family farm corporation" be natural persons and requires that sixty percent of the corporation's income over the last three years have come from farming.⁸²

In addition to the exemptions for family farm corporations, most of the statutes contain exceptions for certain other small corpo-

71. OKLA. STAT. ANN. tit. 18, § 955 (West Supp. 1979). Certain trusts, limited partnerships and partnerships can qualify for exemption from the restriction, just as can certain corporations. *Id.*

72. See notes 116-23 and accompanying text *infra*.

73. See notes 49-52 and accompanying text *supra*.

74. There are several reasons for incorporation of family-owned farms and smaller farms, including tax advantages (such as those available under Subchapter S of the Internal Revenue Code of 1954); advantages stemming from unity of ownership and management in the corporate form (particularly in situations where farming assets are owned in different proportions by those involved with the farm, or they supply labor to the enterprise in varying degrees); and, the ability of the corporate form to minimize the cyclical life of the family farm (dependent on the lives of the natural persons who own and operate the farm). See discussion in Harl, *Public Policy Aspects of Farm Incorporation*, 20 BUS. LAW. 933 (1965).

75. MINN. STAT. ANN. § 500.24 subd. 3(b) (West Supp. 1979).

76. S.D. CODIFIED LAWS ANN. § 47-9A-13 (Supp. 1979).

77. IOWA CODE ANN. § 172C.4 (West Supp. 1979) (also exempts family trusts).

78. MO. ANN. STAT. § 350.015(2) (Vernon Supp. 1980).

79. IOWA CODE ANN. § 172C.1(8) (West Supp. 1979); MINN. STAT. ANN. § 500.24 subd. 2(c) (West Supp. 1979); MO. ANN. STAT. § 350.010 (Vernon Supp. 1980); S.D. CODIFIED LAWS ANN. § 47-9A-14 (Supp. 1979).

80. MINN. STAT. ANN. § 500.24 subd. 2(c) (West Supp. 1979); MO. ANN. STAT. § 350.010 (Vernon Supp. 1980); S.D. CODIFIED LAWS ANN. § 47-9A-14 (Supp. 1979).

81. MINN. STAT. ANN. § 500.24 subd. 2(c) (West Supp. 1979); S.D. CODIFIED LAWS ANN. § 47-9A-14 (Supp. 1979).

82. IOWA CODE ANN. §§ 172C.1(8)(b), .1(8)(c) (West Supp. 1979).

rations engaged in agriculture.⁸³ Some states refer to such corporations as "authorized farm corporations" to distinguish them from "family farm corporations."⁸⁴ Qualifications for this exemption include a limitation on the number of shareholders. For example, Minnesota limits shareholders to five,⁸⁵ Kansas,⁸⁶ South Dakota,⁸⁷ and Oklahoma,⁸⁸ limit them to ten, Wisconsin to fifteen,⁸⁹ and Iowa to twenty-five.⁹⁰ The statutes further limit permitted shareholders to natural persons or fiduciaries for natural persons.⁹¹ Additional examples of shareholder restrictions include the Kansas prohibition on ownership of stock in another corporation engaging in certain crop production,⁹² and the Minnesota requirement that a majority of the shareholders reside on the farm or be actively engaged in farming it.⁹³

To some extent, this exemption for small or "authorized" corporations seems to have been influenced by the requirements for election of tax treatment under Subchapter S of the Internal Revenue Code.⁹⁴ Thus, Minnesota and South Dakota require that exempt "authorized farm corporations" have only one class of shares and that revenues from rent, royalties, dividends, interest, and annuities

83. Iowa and Wisconsin also include certain trusts. IOWA CODE ANN. § 172C.4 (West Supp. 1979); WIS. STAT. ANN. § 182.001(2) (West Supp. 1979). Oklahoma includes a broader range of associations in the exemption. OKLA. STAT. ANN. tit. 18, § 955 (West Supp. 1979).

84. IOWA CODE ANN. § 172C.1(9) (West Supp. 1979); MINN. STAT. ANN. § 500.24 subd. 2(d) (West Supp. 1979).

85. MINN. STAT. ANN. § 500.24 subd. 2(d) (West Supp. 1979).

86. KAN. STAT. ANN. § 17-5901(a) (1974).

87. S.D. CODIFIED LAWS ANN. § 47-9A-15 (Supp. 1979).

88. Not more than ten, unless related. OKLA. STAT. ANN. tit. 18, § 951 (West Supp. 1979).

89. Lineal ancestors and descendants, aunts, uncles and first cousins count collectively as one, as long as "this collective authorization shall not be used for more than one family in a single corporation. . . ." WIS. STAT. ANN. § 182.001(1)(a) (West Supp. 1979).

90. IOWA CODE ANN. § 172C.1(9)(a) (West Supp. 1979).

91. See notes 85-90 *supra*. Iowa includes fiduciaries for nonprofit corporations. IOWA CODE ANN. § 172C.1(9)(b) (West Supp. 1979). Kansas requires that the incorporators be natural persons residing in the state. KAN. STAT. ANN. § 17-5901 (1974).

92. KAN. STAT. ANN. § 17-5901 (1974).

93. MINN. STAT. ANN. § 500.24 subd. 2(d)(5) (West Supp. 1979).

94. I.R.C. §§ 1371-1378. A corporation which meets the requirements of Subchapter S may elect to have its income taxed directly to its shareholders, rather than to the corporation. In order to qualify for this tax status a corporation must be a domestic corporation with no nonresident alien shareholders, only one class of outstanding stock, all shareholders consenting to the election, and no more than twenty percent of its gross income derived from "passive" sources. For many years Subchapter S corporations were limited to ten or fewer shareholders, all of whom had to be individuals or estates. That limit has now been raised to fifteen. *Id.* §§ 1371-1372.

cannot exceed twenty percent of the gross income.⁹⁵ Wisconsin, on the other hand, limits the classes of shares outstanding to two,⁹⁶ and Oklahoma limits income from sources other than farming to thirty-five percent of the gross.⁹⁷

States which exempt certain corporations from their corporate farming restrictions generally do not limit the size of the farms which the exempt corporations own or operate.⁹⁸ Kansas, however, does mandate that exempt corporations own or control no more than 5,000 acres.⁹⁹

C. OTHER EXEMPTIONS

The more modern corporate farming statutes¹⁰⁰ exempt from their provisions land owned or leased by corporations prior to the laws' effective dates.¹⁰¹ Several of the statutes also allow for limited expansion of corporate holdings after their effective dates. In Minnesota this expansion is limited to twenty percent of the pre-May 20, 1973 land holding within any five-year period,¹⁰² while in Missouri,¹⁰³ South Dakota¹⁰⁴ and Wisconsin,¹⁰⁵ the laws allow expansion up to twenty percent in any five-year period.

The newer statutes exclude from their prohibitions bona fide encumbrances taken for purposes of security.¹⁰⁶ The restrictions generally do not apply to research or experimental farms¹⁰⁷ nor to farms

95. MINN. STAT. ANN. § 500.24 subd. 2(d) (West Supp. 1979); S.D. CODIFIED LAWS ANN. § 47-9A-15 (Supp. 1979).

96. WIS. STAT. ANN. § 182.001 (West Supp. 1979).

97. Either yearly, or averaged over the last five years. OKLA. STAT. ANN. tit. 18, § 951(A)(2) (West Supp. 1979).

98. Unlike the statutes cited in note 36 *supra*.

99. KAN. STAT. ANN. § 17-5901 (1974).

100. Unlike N.D. CENT. CODE §§ 10-06-01 to -06 (1976).

101. IOWA CODE ANN. §§ 172C.4(9), .4(10) (West Supp. 1979); MINN. STAT. ANN. §§ 500.24 subd. 3(c), (f), (n), (o) (West Supp. 1979); MO. ANN. STAT. § 350.015(3) (Vernon Supp. 1980); S.D. CODIFIED LAWS ANN. § 47-9A-5 (Supp. 1979); WIS. STAT. ANN. §§ 182.001(2)(c)(1), (2)(c)(2), (2)(c)(4) (West Supp. 1979).

102. MINN. STAT. ANN. § 500.24 subd. 3(c) (West Supp. 1979).

103. MO. ANN. STAT. § 350.015 (Vernon Supp. 1980).

104. S.D. CODIFIED LAWS ANN. § 47-9A-5 (Supp. 1979).

105. WIS. STAT. ANN. § 182.001(2)(c) (West Supp. 1979).

106. IOWA CODE ANN. § 172C.4(1) (West Supp. 1979); MINN. STAT. ANN. § 500.24 subd. 3(a) (West Supp. 1979); MO. ANN. STAT. § 350.015(1) (Vernon Supp. 1980); S.D. CODIFIED LAWS ANN. § 47-9A-6 (Supp. 1979).

107. IOWA CODE ANN. § 172C.4(2) (West Supp. 1979): "[I]f the commercial sales from such agricultural land are incidental to the research or experimental objectives of the corporation." MINN. STAT. ANN. § 500.24 subd. 3(d) (West Supp. 1979): "[P]rovided that any commercial sales from such farm shall be incidental to the research or experimental objectives of

that raise breeding stock or seed.¹⁰⁸ Acquisitions by certain noncommercial corporations are excepted¹⁰⁹ as are acquisitions by banks and trust companies in some jurisdictions.¹¹⁰

The statutes allow corporate acquisitions for nonagricultural uses¹¹¹ and usually allow the corporate holder to lease the land to a "family farm corporation" or "authorized farm corporation."¹¹² The laws further permit corporations to obtain agricultural land through process of law in the collection of debts or in the enforcement of liens.¹¹³

the corporation." MO. ANN. STAT. § 350.015(4) (Vernon Supp. 1980): "[P]rovided that any commercial sales from such farm shall be incidental to the research or experimental objectives of the corporation." S.D. CODIFIED LAWS ANN. § 47-9A-9 (Supp. 1979): "[P]rovided, that any commercial sales from such farm shall be incidental to the research or experimental objectives of the corporation." See also OKLA. STAT. ANN. tit. 18, § 954 (West Supp. 1979); WIS. STAT. ANN. § 182.001(2)(d) (West Supp. 1979).

108. MINN. STAT. ANN. § 500.24 subd. 3(e) (West Supp. 1979); S.D. CODIFIED LAWS ANN. § 47-9A-10 (Supp. 1979); WIS. STAT. ANN. § 182.001(2)(d) (West Supp. 1979). Missouri's list of exempted uses is somewhat more extensive than most.

Agricultural land operated by a corporation for the purpose of growing nursery plants, vegetables, grain or fruit used exclusively for brewing or winemaking or distilling purposes and not for resale, for forest cropland or for the production of poultry, poultry products, fish or mushroom farming, production of registered breeding stock for sale to farmers, to improve their breeding herds, for the production of raw materials for pharmaceutical manufacture, chemical processing, food additives and related products, and not for resale. . . .

MO. ANN. STAT. § 350.015(5) (Vernon Supp. 1980).

109. IOWA CODE ANN. § 172C.4(3) (West Supp. 1979):

[L]and acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increase or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.

Iowa also exempts municipal corporations. IOWA CODE ANN. § 172C.4(6) (West Supp. 1979).

110. MO. ANN. STAT. § 350.015(11) (Vernon Supp. 1980): "A bank or trust company acting as administrator or executor under the terms of a will or trustee under the terms of a testamentary . . . trust." S.D. CODIFIED LAWS ANN. § 47-9A-4 (Supp. 1979): "[P]rovided, however, that no national or state bank or trust company shall purchase agricultural lands in South Dakota through a pooled investment fund formed from assets from retirement, pension, profit sharing, stock bonds or other trusts."

111. IOWA CODE ANN. §§ 172C.4(4), 4(11) (West Supp. 1979): "Agricultural land acquired by a corporation for immediate or potential use in nonfarming purposes"; MINN. STAT. ANN. § 500.24 subd. 3(h) (West Supp. 1979) provides that the corporation must have "documented plans to use" and must subsequently use the "land within six years from the date of purchase for a specific nonfarming purpose." See also MO. ANN. STAT. § 350.015(8) (Vernon Supp. 1980); S.D. CODIFIED LAWS ANN. § 47-9A-12 (Supp. 1979); WIS. STAT. ANN. § 182.001(2)(e) (West Supp. 1979).

112. MINN. STAT. ANN. § 500.24 subd. 3(h) (West Supp. 1979); MO. ANN. STAT. § 350.015(8) (Vernon Supp. 1980); S.D. CODIFIED LAWS ANN. § 47-9A-12 (Supp. 1979). See also WIS. STAT. ANN. § 182.001(2)(e) (West Supp. 1979).

113. IOWA CODE ANN. § 172C.4(5) (West Supp. 1979); MINN. STAT. ANN. § 500.24 subd. 3(i) (West Supp. 1979):

D. OTHER REQUIREMENTS

A few of the corporate farming laws require corporations permitted to own or operate farms to obtain state approval before engaging in these activities.¹¹⁴ Several of the states restricting corporate ownership also require reports of corporations engaged in farming. These requirements seem designed to generate information about the impact of corporate activity on the ownership and operation of agricultural resources. Nebraska's statute, which imposes a reporting requirement rather than restrictions on corporate ownership and operation, declares that it was enacted "[i]n pursuit of documented evidence of any anticompetitive forces at work within the agricultural industry in Nebraska."¹¹⁵

The reporting requirements generally request the corporation's name, address, place of incorporation, registered agent, the acreage owned and/or leased, and the identities of officers, directors and shareholders who own ten percent or more of the corporation's shares.¹¹⁶ Iowa and Nebraska require reporting of alien participation,¹¹⁷ and Iowa further requires rather particular information with respect to numbers and kinds of poultry and livestock, acreage devoted to production of each crop, and crop-share lease arrange-

[P]rovided, however, that all lands so acquired be disposed of within ten years after acquiring the title thereto, and further provided that the land so acquired shall not be used for farming during the ten year period except under a lease to a family farm unit, a family farm corporation or an authorized farm corporation. The aforementioned ten year limitation period shall be deemed a covenant running with the title to the land against any corporate grantee or assignee or the successor of such corporation. . . .{.]

MO. ANN. STAT. § 350.015(9) (Vernon Supp. 1980) (also ten-year disposal requirements); S.D. CODIFIED LAWS ANN. § 47-9A-7 (Supp. 1979) (ten-year disposal requirement); WIS. STAT. ANN. § 182.001(2)(a) (West Supp. 1979): "[P]rovided the land is sold or otherwise transferred within 5 years after such acquisition and provided . . . the sale or transfer can be made at fair market value." *See also* N.D. CENT. CODE § 10-06-05 (1976).

114. MINN. STAT. ANN. § 500.24 subd. 4(5) (West Supp. 1979) provides: "No corporation shall commence farming in this state until the commissioner of agriculture has inspected the report and certified that its proposed operations comply with the provisions of this section." S.D. CODIFIED LAWS ANN. § 47-9A-18 (Supp. 1979) requires filing with the secretary of state who must certify "that its proposed operations comply with the provisions of §§ 47-9A-16 and 47-9A-17." OKLA. STAT. ANN. tit. 18, § 951(A)(4) (West Supp. 1979) requires that the corporations' articles "initially be approved by the State Board of Agriculture concerning the purpose prior to filing in the office of the Secretary of State."

115. NEB. REV. STAT. § 76-1501 (1976).

116. IOWA CODE ANN. § 172C.5 (West Supp. 1979); MINN. STAT. ANN. § 500.24 subd. 4(a) (West Supp. 1979); NEB. REV. STAT. § 76-1503 (1976); S.D. CODIFIED LAWS ANN. § 47-9A-16 (Supp. 1979).

117. IOWA CODE ANN. § 172C.5 (West Supp. 1979) (those nonresident aliens owning five percent or more of the corporation's shares); NEB. REV. STAT. § 76-1503 (1976) (percentage of alien directors, shareholders owning ten percent or more of the shares, officers and managers).

ments.¹¹⁸ Iowa also applies reporting requirements to limited partnerships,¹¹⁹ fiduciaries,¹²⁰ certain corporate, limited partnership and alien beneficiaries¹²¹ and certain processors.¹²² Kansas, on the other hand, requires the same report from a farming corporation that it requires from any Kansas corporation.¹²³

E. ENFORCEMENT

The North Dakota Corporate Farming Law requires that corporations which acquire rural real estate "used or usable for farming or agriculture, . . . dispose of such real estate, . . . within ten years from the date that it was so acquired."¹²⁴ The penalty for failure to dispose of agricultural real estate after this ten-year period is that "title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the state's attorney of such county."¹²⁵

Similar penalties are contained in the more recent corporate farming statutes. Most contain the possibility of injunction of the violation,¹²⁶ fine¹²⁷ and/or a requirement that the improperly-held lands be divested.¹²⁸ The Oklahoma statute allows actions for divestment to be initiated by "[a]ny resident of the county in which the land is situated, who is of legal age."¹²⁹ If the action is successful, then the court may order the corporation to divest within a "reason-

118. IOWA CODE ANN. § 172C.5 (West Supp. 1979).

119. *Id.* § 172C.6.

120. *Id.* § 172C.7.

121. *Id.* § 172C.8.

122. *Id.* § 172C.9.

123. KAN. STAT. ANN. §§ 17-5902, -7503, -7504, -7505 (1974).

124. N.D. CENT. CODE § 10-06-03 (1976): "During said ten-year period, the corporation may farm and use such lands for agricultural purposes. The ten-year limitation provided by this section shall be deemed a covenant running with the title to the land against any grantee, successor, or assignee of such corporation, which is also a corporation."

125. *Id.* § 10-06-06. The county is then to "dispose of the land within one year at public auction to the highest bidder" and pay the proceeds, after deduction of expenses, to the corporation.

126. IOWA CODE ANN. § 172C.4(12) (West Supp. 1979); OKLA. STAT. ANN. tit. 18, § 952 (West Supp. 1979); MINN. STAT. ANN. § 500.24 subd. 5 (West Supp. 1979).

127. IOWA CODE ANN. § 172C.4(12) (West Supp. 1979) (not more than \$50,000); OKLA. STAT. ANN. tit. 18, § 952 (West Supp. 1979) (up to \$500 per violation); WIS. STAT. ANN. § 182.001(4) (West Supp. 1979) (up to \$1,000 for each violation).

128. IOWA CODE ANN. § 172C.4(12) (West Supp. 1979) (A violator must divest within one year following conviction.); MINN. STAT. ANN. § 500.24 subd. 5 (West Supp. 1979) (The corporation has five years from the date of a court order declaring a violation to divest. This five-year period is deemed to be a covenant running with the land. Lands not divested are sold at public sale.); S.D. CODIFIED LAWS ANN. § 47-9A-22 (Supp. 1979).

129. OKLA. STAT. ANN. tit. 18, § 953 (West Supp. 1979).

able period of time."¹³⁰ Oklahoma also provides revocation of license or franchise for violating corporations.¹³¹ The jurisdictions which have created reporting requirements have established fines for violations.¹³²

F. ALIEN CORPORATIONS OR SHAREHOLDERS

Some of the states discussed in this article restrict corporate land ownership based on the alien status of the corporation or its shareholders.¹³³ The motivation for this sort of restriction seems to be similar to that behind restriction on corporate ownership generally.¹³⁴ Thus, Iowa provides that a "foreign business," including a corporation incorporated under the laws of a foreign country, or incorporated in this country if a majority interest is owned directly or indirectly by nonresident aliens, "shall not purchase or otherwise acquire agricultural land in this state."¹³⁵ Missouri similarly prohibits any "foreign business" from acquiring land, or from leasing it for longer than ten years.¹³⁶ Minnesota provides that

no corporation, partnership, limited partnership, trustee, or other business entity shall hereafter, directly or indirectly, acquire . . . any interest . . . in any title to agricultural land unless at least 80 percent of each class of stock issued and outstanding or 80 percent of the ultimate beneficial interest of such entity is held directly or indirectly by citizens of the United States or permanent resident aliens.¹³⁷

Nebraska prohibits "aliens and corporations not incorporated under the laws of the State of Nebraska" from acquiring or leasing any land (not within cities and villages or within three miles of them) for

130. *Id.*

131. *Id.* § 952.

132. IOWA CODE ANN. § 172C.11 (West Supp. 1979); KAN. STAT. ANN. § 17-5902(b) (1974); NEB. REV. STAT. § 76-1506 (1976); S.D. CODIFIED LAWS ANN. § 47-9A-20 (Supp. 1979).

133. See notes 135-40 *infra*. In at least one jurisdiction, prohibition of acquisition of land seems to be constitutionally based. See Opinion of the Attorney General of Oklahoma No. 79-286, September 12, 1979, 2 CORP. LAW GUIDE (CCH) ¶ 10,872, stating that article 22, § 1 of the Oklahoma Constitution forbids alien corporations, as well as other aliens, from owning Oklahoma land.

134. See SENATE COMM. ON AGRICULTURE, NUTRITION, AND FORESTRY, 95TH CONG., 2D SESS., FOREIGN INVESTMENT IN UNITED STATES AGRICULTURAL LAND (Comm. Print 1979) [hereinafter cited as FOREIGN INVESTMENT].

135. 1979 Iowa Legis. Serv. 601 (to be codified at IOWA CODE ANN. § 567).

136. MO. ANN. STAT. §§ 442.560 to .592 (Vernon Supp. 1980).

137. MINN. STAT. ANN. § 500.221 subd. 2 (West Supp. 1979). Those aliens who acquired land in Minnesota prior to May 27, 1977 must file an annual report. *Id.* § 500.221 subd. 4. See also note 143 and accompanying text *infra*.

a period of more than five years.¹³⁸ Nebraska further provides that domestic corporations or corporations licensed to do business in Nebraska shall not have boards of directors with alien majorities, nor have alien executive officers or managers, nor have a majority of capital stock owned by aliens.¹³⁹ Wisconsin limits the land that can be held by nonresident aliens or corporations to 640 acres.¹⁴⁰ Certain other states regulate ownership of land by alien corporations less restrictively. For example, South Carolina will not permit an alien-controlled corporation to own more than 500,000 acres of land.¹⁴¹

Heightened concern over the perceived danger that foreign investment poses to American "family farms" has caused Congress to enact the Agricultural Foreign Investment Disclosure Act of 1978.¹⁴² Like the state reporting requirements imposed on alien owners, this federal statute is designed to provide information on foreign individuals and corporations who own, acquire or transfer interests in agricultural land.¹⁴³ The legislation applies not only to alien corporations but also to any corporations owning or controlling farm lands in which a "significant interest or substantial control"¹⁴⁴ is directly or indirectly held by foreign persons.¹⁴⁵ The Act does not prohibit alien ownership, but merely requires reports¹⁴⁶ which the

138. NEB. REV. STAT. §§ 76-402 to -414 (1976).

139. *Id.* § 76-406.

140. WIS. STAT. ANN. § 710.02 (West Supp. 1979):

No corporation or association more than 20 per cent of the stock of which is or may be owned by any person who is such nonresident alien shall hereafter acquire, hold or own more than said quantity of land in this state. . . . All lands acquired, held or owned in violation of the provisions hereof shall be forfeited to the state.

141. S.C. CODE § 27-13-30 (1976).

142. 7 U.S.C.A. §§ 3501-3508 (West Supp. 1979) (AFIDA).

143. The Act requires foreign individuals and corporations who hold, acquire or transfer interests in agricultural land to report to the Secretary of Agriculture. *Id.* § 3501. The report must include the foreigner's name and address, the agricultural purpose for which the land will be used, and the purchase price. *Id.* For foreign corporations, the report must include the name and address of each person who holds a substantial interest in that corporation. *Id.* See 11 LAW AND POLICY IN INT'L BUS. 85 (1979); 19 HARV. INT'L L.J. 1026 (1978).

Illinois recently adopted a similar "Agricultural Foreign Investment Disclosure Act," Pub. Act 81-187, 1979 Ill. Legis. Serv. 307-11 (to be codified as ILL. ANN. STAT. ch. 5, §§ 601-608 (Smith-Hurd)). The Illinois statute requires "foreign persons" to report their transactions and holdings in agricultural land to the Illinois Director of Agriculture, who is to "analyze information contained in such reports and determine the effects such transactions and holdings have, particularly on family farms and rural communities, and for other purposes." 1979 Ill. Legis. Serv. at 307.

144. 7 U.S.C.A. § 3508 (West Supp. 1979).

145. *Id.*

146. See note 143 *supra*.

Secretary of Agriculture is to analyze in order to determine the effects of foreign ownership, especially on family farms and rural communities.¹⁴⁷ Like information on corporate ownership of agricultural land, accurate data on alien investment is difficult to obtain.¹⁴⁸ AFIDA's effectiveness in generating more and better information remains doubtful at this time.¹⁴⁹

III. PROPOSED FEDERAL REGULATION OF CORPORATE OWNERSHIP AND OPERATION OF FARMS

Concerns which sparked the Agricultural Foreign Investment Disclosure Act of 1978 and which prompted the state statutes discussed earlier also have been responsible for proposed corporate farming legislation in recent sessions of Congress. Included in proposals is a "Family Farm Antitrust Act."¹⁵⁰ This legislation is motivated by findings that

(1) vertical integration of the agricultural industry by corporations engaged in the processing, distributing, and retail industries, and other conglomerate corporations, tends to create monopolies in the agricultural industry and produce unfair competition for family farms, contributing to the demise of rural communities; (2) the potential for foreign investment in productive agricultural land remains an imminent threat to the family farm; and (3) there is a serious lack of information on corporate investments in farmland.¹⁵¹

The legislation, framed as an amendment to section seven of the Clayton Act,¹⁵² prohibits persons engaged in nonfarming business

147. 7 U.S.C.A. § 3504 (West Supp. 1979). Violation of the reporting requirement may lead to a substantial fine (up to twenty-five percent of the offender's interest in the land). *Id.* § 3502.

148. See GENERAL ACCOUNTING OFFICE, REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES: FOREIGN OWNERSHIP OF U.S. FARMLAND—MUCH CONCERN, LITTLE DATA (CED-78-132, 1978) reprinted in FOREIGN INVESTMENT, *supra* note 134, at 65 *et seq.*

149. 19 HARV. INT'L L.J. 1026, 1030-31 (1978). See also general discussion in FOREIGN INVESTMENT, *supra* note 134.

150. First introduced as the Family Farm Antitrust Act of 1973, S. 590, 93rd Cong., 1st Sess. (1973), this legislation has been introduced regularly since then. Most recently, Senator Bayh introduced the Family Farm Antitrust Act of 1979, S. 334, 96th Cong., 1st Sess. (1979). A similar bill has been introduced in the House of Representatives by Congressman Kastenmeier, H.R. 1045, 96th Cong., 1st Sess. (1979). Legislation similar to the Family Farm Antitrust Act was introduced in the Montana Legislature in 1973, but was not adopted. For a discussion of the Montana version see McDonald, *The Family: How Are You Going to Keep Them Down on the Farm?*, 35 MONT. L. REV. 88 (1974).

151. S. 334, *supra* note 150.

152. 15 U.S.C. § 18 (1976).

whose nonfarming business assets exceed \$15,000,000¹⁵³ from directly or indirectly controlling farm production through ownership or leasing of agricultural land.¹⁵⁴ Like most of the state laws discussed above, this legislation would exempt certain "family farm" corporations,¹⁵⁵ cooperatives, and ownership for research, experimental and resource development uses.¹⁵⁶ The proposal carries the Agricultural Foreign Investment Disclosure Act a step further by preventing "foreign persons," as defined in that Act,¹⁵⁷ from acquiring agricultural real estate unless that land is put to a nonagricultural use within five years.¹⁵⁸

The Senate version of this legislation requires any entity with nonfarming assets of more than \$15,000,000, which holds an interest in agricultural land, to make an annual filing with the Secretary of Commerce.¹⁵⁹ The House version directs the Secretary of Agriculture to acquire at fair market value any property which must be divested under the proposal, if the violator cannot otherwise divest himself of such property.¹⁶⁰

Sponsors of the proposed legislation intend it to fill a gap between the present federal antitrust laws and the state restrictions on corporate farming.¹⁶¹ This federal proposal makes holding of agricultural land by persons engaged in nonfarming business, whose nonfarming business assets exceed a certain amount, guilty of a *per se* offense.¹⁶² Proof of such an offense does not depend on statistical analysis, which might otherwise be a requisite in enforcement under either the Clayton Act or the Sherman Act.¹⁶³

IV. CHALLENGES TO CORPORATE FARMING LAWS IN THE COURTS

Litigation challenging the legality of restrictions on corporate ownership and operation of agricultural real estate has been rare. In

153. H.R. 1045, *supra* note 150, sets this limit at \$3,000,000.

154. S. 334, *supra* note 150.

155. *Id.*

156. *Id.*

157. *See* note 143 *supra*.

158. S. 334, *supra* note 150.

159. *Id.*

160. H.R. 1045, *supra* note 150.

161. For a discussion of this legislation by one of its early sponsors see Abourezk, *Agriculture, Antitrust and Agribusiness: A Proposal for Federal Action*, 20 S.D. L. REV. 499 (1975).

162. *Id.* at 509.

163. Statistical analysis showing monopoly power, or intent to monopolize, or a trend toward concentration may be required if such conduct is not a *per se* offense. *Id.*

the 1940's, North Dakota's Corporate Farming Law¹⁶⁴ was attacked in *Asbury Hospital v. Cass County*.¹⁶⁵ Asbury Hospital was a non-profit Minnesota corporation which had acquired North Dakota farm land through a mortgage foreclosure prior to enactment of the statute. After adoption of the restriction,¹⁶⁶ the hospital had tried to sell this land, but found this was not possible except for an amount substantially less than had been invested.¹⁶⁷ The hospital then sought a declaratory judgment that the Corporate Farming Law was unconstitutional urging, among other grounds, that the statute violated the due process clause and the equal protection clause of the fourteenth amendment.¹⁶⁸

The Supreme Court noted that the "Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it."¹⁶⁹ The Court concluded that the due process clause did not guarantee that the hospital could recover its investment, but only required that the corporation be "afforded a fair opportunity to realize the value of the land."¹⁷⁰ The corporation was not denied this "fair opportunity" because the statute provided a ten-year period in which the hospital could sell before a forced public sale of its land.¹⁷¹ The Supreme Court also rejected the corporation's argument that the Corporate Farming Law's exception for certain corporations¹⁷² created a violation of the equal protection clause of the fourteenth amendment.

The legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose. . . . We cannot say that there are no differences between corporations generally and those falling into the excepted classes which may appropriately receive recognition in the legislative application of a state policy against the concentration of farming lands in corporate ownership.¹⁷³

More recently, the North Dakota statute was challenged by a corporation which sought to require the North Dakota Secretary of State to file corporate articles which included the purpose of engag-

164. See notes 53-58 and accompanying text *supra*.

165. 326 U.S. 207 (1945), *aff'g* 73 N.D. 469, 16 N.W.2d 523 (1944).

166. See notes 57-58 and accompanying text *supra*.

167. 326 U.S. 210.

168. *Id.* at 209-10.

169. *Id.* at 211.

170. *Id.* at 212.

171. *Id.* at 213.

172. See note 55 *supra*.

173. 326 U.S. at 214 (citation omitted).

ing in the business of farming or agriculture with powers to acquire real estate used or usable for farming or agriculture. In *Coal Harbor Stock Farm, Inc. v. Meier*,¹⁷⁴ the proposed corporation argued that, in spite of the broad prohibition of the statute,¹⁷⁵ the fact that the divestment clauses required disposal of land which is usable for agriculture "except such as is reasonably necessary in the conduct of their businesses"¹⁷⁶ meant that the intent of the statute was to prohibit farming by corporations whose main purpose was other than farming or ranching.¹⁷⁷ The North Dakota Supreme Court rejected this argument, finding that the statute's broad provision against corporate farming¹⁷⁸ "prohibits all corporations, except the qualified cooperative corporations, from engaging in the business of farming or agriculture."¹⁷⁹ The divestment provisions, the court found, "limit the power of corporations to own, hold and use rural real estate and do not conflict with the prohibition from engaging in the business of farming or agriculture."¹⁸⁰

V. DO CORPORATE FARMING STATUTES WORK?

It has been noted that corporate farming statutes have not been attacked frequently in the courts. Though there has been some suggestion that the laws may be constitutionally vulnerable,¹⁸¹ few argue for a renewed due process attack or for a challenge under the commerce clause,¹⁸² which the Supreme Court found not to be in issue in *Asbury Hospital v. Cass County*.¹⁸³ Assuming the legal validity of corporate farming statutes, the most compelling question becomes: do they work? The statutes purport to "prevent monopoly,"

174. 191 N.W.2d 583 (N.D. 1971).

175. N.D. CENT. CODE § 10-06-01 (1976).

176. *Id.* § 10-06-02; *see also id.* §§ 10-06-03, -06.

177. 191 N.W.2d at 586, 588-89.

178. N.D. CENT. CODE § 10-06-01 (1976).

179. 191 N.W.2d at 588.

180. *Id.*

181. *See* Opinion of the Attorney General of Nebraska, No. 5, January 23, 1975, 2 CORP. L. GUIDE (CCH) ¶ 12,012, suggesting that such legislation might well be unconstitutional because there did not appear to be a legitimate reason or "rational" basis for singling out corporate participation in the farming industry.

182. Comment, *Proposed Anticorporate Farm Legislation*, *supra* note 65. The authors conclude that corporate farming legislation could withstand commerce clause attack because: (1) it does not impede importation of farm goods into a state; (2) a "prohibition of large industrial farms for the purpose of preventing rural dislocation and avoiding the adverse effects of industrialization seems to be within the police power"; and (3) the state interest fostered by such legislation outweighs the federal interest in leaving commerce unrestricted. *Id.* at 1211-12.

183. 326 U.S. at 210.

“protect the family farm,” “promote stability and well-being of rural society,” “nurture the free enterprise system” and encourage “economic and moral stability.”¹⁸⁴ Does the legislation accomplish any of this?

It would be easier to answer this question if it were known with some certainty that corporate involvement in agriculture presents the danger which the statutes seek to prevent. Proponents of corporate restriction argue that advantages of economies of scale, technology and vertical integration, allow corporate farming to force out “family farms” and that the corporate form of organization is concomitant with absentee ownership and control, and extensive involvement in agriculture by nonfarm interests.¹⁸⁵ They suggest that large scale “corporate” farming has an adverse impact on the economy and social fabric of the rural communities in which it is practiced.¹⁸⁶ However, these potential harms do not seem to be unique to corporate involvement in agriculture. It would appear that large-scale, monopolistic, absentee-owned agriculture could be conducted through the exceptions which most of the above-discussed statutes allow,¹⁸⁷ or through noncorporate forms of association.¹⁸⁸ Current information on trends in ownership and control, though more extensive than that available in the past, remains inadequate. A recent Senate Select Committee Report laments: “In fact, very little is known about the ownership of farmland, including just how much land is owned by those who actually farm the land or whether

184. See notes 49-52 and accompanying text *supra*.

185. See, e.g., discussions in Comment, *Proposed Anticorporate Farm Legislation*, *supra* note 65; Comment, *The South Dakota Family Farm Act of 1974: Salvation or Frustration for the Family Farmer?*, *supra* note 49.

186. There is little information comparing agricultural communities dominated by large-scale corporate farming to agricultural communities which are not. One oft-cited comparative study found that a community built on small, family-type farm units was superior in its level of education, residential stability, median family income, participation in civic and social activities, numbers of schools and churches, numbers of businesses and volume of trade. See SENATE SPECIAL COMM. TO STUDY PROBLEMS OF AMERICAN SMALL BUSINESS, 79TH CONG., 2D SESS., SMALL BUSINESS AND THE COMMUNITY (Comm. Print No. 13, 1946), reprinted in SENATE SELECT COMM. ON SMALL BUSINESS, 95TH CONG., 2D SESS., SMALL BUSINESS AND THE QUALITY OF AMERICAN LIFE at 395-539 (Comm. Print 1978).

187. See notes 83-99 and accompanying text *supra*. See also F. MORRISON & K. KRAUSE, *supra* note 48.

188. Perhaps this possibility is responsible for the fact that Iowa and Wisconsin now apply their restrictions to trusts as well as corporations. IOWA CODE ANN. § 172C.4 (West Supp. 1979); WIS. STAT. ANN. § 182.001 (West Supp. 1979). Oklahoma has expanded the scope of its regulation to apply to corporations, associations, or “any other entity.” OKLA. STAT. ANN. tit. 18, § 955 (West Supp. 1979). Iowa includes limited partnerships in its reporting requirement. IOWA CODE ANN. § 172C.6 (West Supp. 1979).

there is an increasing or decreasing trend toward non-local or investor ownership of farmland."¹⁸⁹

It is clear that the size of an average American farm continues to grow.¹⁹⁰ The relationship of corporate farming to this trend is not so clear. Nationally, the proportion of agricultural lands and production controlled by corporations is relatively small, but growing. According to one report, corporations accounted for eighteen percent of agricultural products sold in 1974, an increase from fourteen percent in 1969.¹⁹¹ However, publicly-traded corporations¹⁹² sold only three percent of agricultural production in 1974.¹⁹³

Perhaps even more difficult than the question of whether corporate farming is really a menace, is the question of whether the restrictions in the corporate farming statutes have any impact on its development. Some statistics are available on the number of corporate farms in individual states, how many have more than ten shareholders, and the amounts of their farm product sales.¹⁹⁴ There is also some reporting of recent farm land transfers to corporations.¹⁹⁵ This information, however, is fragmentary and inconsistent.¹⁹⁶ Consequently, it is difficult to make instructive comparison between jurisdictions with corporate farming statutes and those without. A 1968 study¹⁹⁷ comparing agricultural trends for 1932-1968 in North Dakota (which restricted corporate farming from 1932 on) to those in South Dakota (which did not restrict corporate farming until 1974) concluded that North Dakota's law had not significantly

189. SENATE SELECT COMM. ON SMALL BUSINESS, 96TH CONG., 2D SESS., OWNERSHIP AND CONTROL OF FARMLAND IN THE UNITED STATES at 2 (Comm. Print 1980) [hereinafter cited as OWNERSHIP AND CONTROL]. Part of the problem appears to be that the information which is available, for example, from Bureau of Census, Government Accounting Office and United States Department of Agriculture studies, is inconsistent. *Id.* at 6-13.

190. See FAMILY FARM REPORT, *supra* note 29, at 9. See also SENATE COMM. ON AGRICULTURE, NUTRITION, AND FORESTRY, 96TH CONG., 1ST SESS., STATUS OF THE FAMILY FARM (Second Annual Report to Congress) (Comm. Print 1979) [hereinafter cited as SECOND FAMILY FARM REPORT].

191. SECOND FAMILY FARM REPORT, *supra* note 190, at 7-8.

192. The 1974 Census of Agriculture "counted 358 publicly traded corporations operating 947 farms." *Id.* at 8.

193. *Id.*

194. See, e.g., results of 1974 Census of Agriculture printed in FAMILY FARM REPORT, *supra* note 29, at 19-20.

195. See FOREIGN INVESTMENT, *supra* note 134, at 76-77.

196. See OWNERSHIP AND CONTROL, *supra* note 189, at 13.

197. South Dakota State Legislative Research Council, Corporate Ownership of Agricultural Land and Farming (Aug. 15, 1968) (Staff Memorandum), cited in Comment, *The South Dakota Family Farm Act of 1974: Salvation or Frustration for the Family Farmer?*, *supra* note 49, at 578 n.22.

helped to maintain farm population or the number of farms—that in fact the Dakotas had shown great similarity in increase of average farm size and decline of farm population.¹⁹⁸

Generation of statistics which might make accurate comparative study possible seems more likely in the future. Federal agency-initiated surveys intended to produce more extensive data are underway.¹⁹⁹ Congress is considering, though neither house has passed,²⁰⁰ legislation designed to provide more substantial information.²⁰¹

VI. ALTERNATIVES AND POLICY CONSIDERATIONS FOR CURRENT REGULATION OF CORPORATE FARMING

Access to more regular and more thorough information on farm ownership and operation²⁰² may eliminate some uncertainty over whether corporate farming statutes accomplish what they set out to do. No matter what future information reveals about the statutes' effectiveness, however, the restrictions on corporate farming must be considered along with alternative approaches to the problems they seek to address. Naturally, the potential responses to policy questions about agricultural ownership and operation are many—a few will be mentioned here. If increasing farm size is the problem, a more direct response is found in the older statutes which place a flat limit on the acreage a corporation may own, or impose a special tax on corporate holdings over a certain amount.²⁰³ If it is true that government commodity price support and production stabilization programs currently encourage farmers to increase their holdings,²⁰⁴ these programs could be redirected to encourage optimum-sized farms, perhaps through limitation on total compensation available through government direct payments, loans, and deficiency pay-

198. *Id.* at 578-79.

199. The Carter administration has launched a "National Agricultural Lands Study," with a scheduled completion date of January 1, 1981, in order to generate more adequate information. See Memorandum of Agreement Between the U.S. Department of Agriculture and the Council on Environmental Quality [hereinafter cited as Memorandum], reprinted in *Farmland Protection Act: Hearings on S. 795 Before the Subcomm. on Environment, Soil Conservation, and Forestry of the Senate Comm. on Agriculture, Nutrition, and Forestry*, 96th Cong., 1st Sess. at 57 (1979). See note 217 *infra*.

200. Agricultural Land Protection Act, H.R. 2551, 96th Cong., 2d Sess., 126 CONG. REC. 690-702 (1980), failed of passage on February 7, 1980.

201. See, e.g., H.R. 2551, *supra* note 200; see also S. 795, 96th Cong., 1st Sess. (1979).

202. See OWNERSHIP AND CONTROL, *supra* note 189.

203. See note 37 *supra*. If size is the primary problem, perhaps such limits should apply to agricultural holdings whether the owner is incorporated or not.

204. See note 29 *supra*.

ments.²⁰⁵ Tax policy which has encouraged farm size growth in the past,²⁰⁶ also could be used to encourage smaller farms. For example, progressive taxes could be imposed on land ownership or on gross farm sales.²⁰⁷ Government-assisted financing could be another form of more direct support for small farms if credit from public sources were made more readily available to smaller-scale owners and operators.²⁰⁸ If the problem is one of encouraging creation of more, rather than fewer farms, perhaps what is required is a resurrected "Homestead Act"²⁰⁹ which could assist new entrants into the agricultural arena.²¹⁰ Clearly, each of these approaches, or any other direct approach,²¹¹ embodies political and administrative problems of its own.²¹² Nevertheless, it seems unwise to too quickly discard these approaches in favor of sole reliance on a more general (and perhaps symbolically richer) set of restrictions on corporate farming.

Finally, future consideration of corporate farming statutes will be most beneficial if it takes note of their relationship to agricultural, economic, and social policy generally. This article briefly alluded to the relationship between restriction of corporate ownership and re-

205. Heady, *supra* note 28, at 615-16. (The author notes that direct payments, as of 1980, have been limited to \$50,000 per year.) The argument for redirection of programs can be made with respect to government sponsored research, which in the past has produced technological advances which encourage larger farm size. For comment on recent developments in this area see Meyerhoff, *Big Farming's Angry Harvest*, NEWSWEEK, March 3, 1980, at 11.

*206. See FAMILY FARM REPORT, *supra* note 29. "Traditionally, the Congress has evidenced a concern with the potential effect of tax legislation on agriculture, and has frequently included special treatment for agriculture." Though congressional intent may have been to aid "family farms," "[t]he largest tax savings apparently accrue to the largest farms and to individuals investing in agriculture to take advantage of the special tax provisions." *Id.* at 29.

207. Heady, *supra* note 28, at 616-17.

208. In the past, for example, it has often been the case that the amount of credit available from the Federal Land Bank and the Production Credit Association, has depended on a farmer's existing equity. *Id.* at 617.

209. See notes 22-24 and accompanying text *supra*.

210. See, e.g., Minnesota's "Family Farm Security Program," MINN. STAT. ANN. §§ 41.51 to .61 (West Supp. 1979). Recently proposed legislation of this type includes the Family Farm Entry Assistance Act, S. 582, 96th Cong., 1st Sess. (1979). This proposal would authorize the Secretary of Agriculture to guarantee assistance made available through state programs to qualified low asset individuals who want to enter agriculture. A few states in addition to Minnesota have enacted, or are considering such programs. See *Problems of Entry into Family Farming: Joint Hearing Before the Senate Select Comm. on Small Business and the Senate Comm. on Agriculture, Nutrition, and Forestry*, 95th Cong., 2d Sess. (1978). See also Stuck, *Modern Innovations to the Homestead Concept*, 21 S.D. L. REV. 542 (1976).

211. See, e.g., Comment, *Proposed Anticorporate Farm Legislation*, *supra* note 65, at 1208-09.

212. For example, such problems involve greater immediate government expense than do simple restrictions on corporate farming.

striction of alien ownership of agricultural land.²¹³ This topic is likely to receive heightened attention for at least the foreseeable future.²¹⁴ Corporate ownership should also be discussed in connection with government policies on preservation of land for agricultural use through, for example, tax treatment²¹⁵ or zoning.²¹⁶ Its relationship to water policy, nonagricultural resource development, and environmental protection generally should be considered carefully.²¹⁷ Restriction on the use of the corporate form for agriculture may have significant implications for agriculture's access to capital and the flow of capital in the economy overall.²¹⁸

It may be that the needs of twenty-first century society will demand dramatic revision in the traditional concepts of "ownership"

213. See notes 133-50 and accompanying text *supra*.

214. See, e.g., FOREIGN INVESTMENT, *supra* note 134.

215. See, e.g., Myers, *The Legal Aspects of Agricultural Districting*, 55 IND. L.J. 1 (1979); Comment, *Assessment to Preserve Agricultural Land: With Application to the Four-State Region of Iowa, Kansas, Missouri and Nebraska*, 47 U.M.K.C. L. REV. 629 (1979).

216. See, e.g., Comment, *Farmland Preservation Techniques: Some Food for Thought*, 40 PITT. L. REV. 258 (1979).

217. The Department of Agriculture—Council on Environmental Quality National Agricultural Lands Study is to "determine and evaluate:"

(a) The quantity, quality, location, and ownership of the Nation's agricultural lands.

(b) The impacts of industrial, urban, transportation, and energy development, and other competing land uses on the future availability of agricultural lands and the impacts on related agricultural services (credit, marketing, etc.).

(c) The urban effects of agricultural land retention.

(d) The effects of federal and state programs, policies, laws, and regulations on agricultural land. (Such functions as community and rural development, public works construction, energy regulation, pollution abatement, and technical and financial assistance programs shall be considered, as well as the impacts of State and Federal water and land use policies on the availability of agricultural lands.)

(e) The impacts of agricultural land losses on the Nation's capacity to meet future domestic demand for food, fiber and energy.

(f) The impacts of agricultural land losses on the Nation's capacity to develop future foreign policies relating to international trade (including the balance of payments) and humanitarian assistance.

(g) The economic, social, and environmental effects of converting additional lands to agricultural use.

(h) The economic, social, and environmental effects of alternative methods for preventing or retarding the conversion of agricultural lands to nonagricultural uses.

(i) Techniques and methods for maintaining agricultural land availability.

(j) The relative roles of the private sector, local, State and Federal governments in implementing methods for retaining agricultural lands.

(k) Ways in which Federal agency programs and activities might be made more consistent with the objective of retaining prime agricultural lands and with local and State programs designed to meet that objective.

Memorandum, *supra* note 199, at 58.

The proposed Agricultural Land Protection Act, *supra* note 200, directs the Secretary of Agriculture to conduct a similar comprehensive study.

218. Harl, *supra* note 35, at 1255-57.

of agricultural land, not just for corporations, but for all potential owners. Perhaps ownership of this resource will come to be viewed as a holding in trust for all.²¹⁹ Ultimately, decisions about the forms under which farming can be conducted affect our agriculture's food, fiber and fuel-producing capacity. No future discussion should ignore this.

CONCLUSION

The decline in the number of American farms and the increase in their size are incontrovertable. The causes of these developments are multiple and the effects are complex. The role of the corporation—whether it precipitates this trend or merely accompanies it—is not clear. More complete and accurate information will facilitate focusing on the corporation's position in agriculture and will aid in determining the impact of corporate farming restrictions. Once this happens there can be a more productive discussion of how corporate regulation fits into the broader implementation of agricultural policy.

219. See Warren, *Agricultural Land: Ownership in Fee Simple or Held in Trust?*, 11 U.C.D. L. REV. 65 (1978).