Chapter 18

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Governmental Framework for Achieving National Land Use Adjustments

AS A TRUE CONSTITUTIONAL system, the United States operates within the framework of a limited government. Thus, there are restrictions of a higher law placed on the policies and laws that emanate from the lawmakers and policy formulators at any given moment.

CONSTITUTIONAL AND LEGAL CONSIDERATIONS

The Supreme Court is, of course, the final arbiter of whether a policy decision is authorized by the United States Constitution. From a realistic standpoint, therefore, Congress must always evaluate whether a given legislative measure, such as national programs of cropland withdrawal, will withstand the test of Supreme Court scrutiny.

A second major factor to be considered in this connection is the federal system established by the Constitution in which there exists a national government and a series of state governments which both receive their power from the Constitution. Under our system the national government exercises delegated powers and implied powers, while the states retain the reserved powers — those not placed in the hands of the national government or specifically denied to the states.

Despite this seemingly formal and clear division of authority, no federal system is precise or tidy. There inevitably exists a host of areas in the penumbra or peripheral zone where there is no clear-cut rule to determine beforehand whether the states or the national government are legally competent to function. As a result, almost all of the major constitutional debates in American political history have revolved around the nature of our federal system. Constitutional issues arising from the nature of the American system of federalism have played a significant role as a stumbling block to national agricultural programs in the past as

in United States v. Butler.[1] This was especially true during the early days of the New Deal when the Supreme Court indulged in the constitutional heresy of dual federalism which rejected many programs of cooperation between the federal government and the states.

The Supreme Court adopted a more tolerant view toward broad national agricultural programs with the change in viewpoint of Justice Roberts in 1937, often called the "switch in time that saved nine" referring to Franklin Roosevelt's court-packing plan. The case of Wickard v. Filburn reveals the willingness of the Court to accept an extension of the commerce clause of the Constitution as a peg on which to hang one type of agricultural program.[2]

If Congress should decide to adopt a national program of large-scale cropland withdrawal, it is clear that the commerce clause is one constitutional provision under which it has proceeded and may continue to proceed.[3] There are, of course, a number of other constitutional principles that may be utilized with, at least, the degree of effectiveness of the commerce clause.

One is the national power of eminent domain. Since this is an incident of sovereignty, the right of eminent domain requires no constitutional recognition.[4] Moreover, the Court has made it clear that the requirement of just compensation in the exercise of the right of eminent domain is merely a limitation upon the preexisting power[5] to which all private property is subject.[6] This national power can neither be enlarged nor diminished by a state.[7] No legal barrier to the national power of eminent domain exists even though state-owned lands taken through proper procedures impair the tax revenue of the state, or interfere with the states' own projects of water development and conservation.[8]

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[1] 297 U.S. 1 (1936).

[2] 317 U.S. 111 (1942).

[3] Examples of congressional enactments concerned with cropland withdrawal tied to the commerce clause are the Soil Conservation and Domestic Allotment Act, 49 Stat. 1148 (1936) and the Agriculture Act of 1956 (Soil Bank Act) 70 Stat. 188.

[4] For examples of recent articles discussing various facets of eminent domain in relationship to agricultural programs see: P. G. Kauper, "Basic principles of eminent domain," 35 Mich. S. Bar J. 10 (Oct., 1956); "Limitations of the Federal Government to acquire land within a state," 9 S. Car. L. Q. 474; F. Fishman, "Some status factors affecting the availability of public lands for general locations," 34 Dicta 243; J. D. McGowen, "Development of political institutions on the public domain," 11 Wyo. L. Rev. 1 (1956); "What constitutes a public use," 23 Albany L. Rev. 386 (1959).

[5] U.S. v. Jones, 109 U.S. 513 (1883); U.S. v. Cormack, 329 U.S. 230 (1946).

[6] U.S. v. Lynah, 188 U.S. 445 (1903).

[7] Kohl v. U. S., 91 U.S. 367 (1876).

[8] Oklahoma v. Atkinson Co., 313 U.S. 508 (1941).

Still another series of powers at the disposal of the national government for use in developing broad and systematic programs of withdrawing agricultural croplands from production are the taxing and spending powers. A variety of Supreme Court decisions in other areas suggest that a prohibitive tax placed on types of marginal and submarginal lands that national policy sought to take out of production, or which the federal government sought to obtain, would probably receive the Supreme Court's approval. The Court has typically refused to look beyond the face of tax statutes and inquire into the motives of the lawmakers despite such a law's prohibitive proportions.[9] In a recent decision the Court explained:

> It is beyond serious question that a tax does not cease to be valid merely because it regulates, discourages or even definitely deters the activities taxed.... The principle applies even though the revenue obtained is obviously negligible... or the revenue purpose of the tax may be secondary.... Nor does a tax statute necessarily fall because it touches on activities which Congress might not otherwise regulate.[10]

Historically, there had been sharp differences of opinion between those who subscribed to Thomas Jefferson's restricted notion of the spending power[11] and the broader and more literal approach favored by Alexander Hamilton.[12]

The Supreme Court was slow to formally accept either of the two competing doctrines, although in 1896 it invoked, "the great power of taxation to be exercised for the common defense and the general welfare" to sustain the right of the federal government to acquire land within a state for use as a national park.[13] In U.S. v. Butler, the Court gave its unqualified support to the Hamiltonian doctrine which maintained that the spending clause conferred a power separate and distinct from any of the enumerated legislative powers and that Congress had the substantive power to tax and to appropriate limited only to the stipulation that its exercise should provide for the general welfare.[14]

In the Butler case, however, the Court, while granting a wide sweep to the spending power, found that this power was limited by

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[9] McCray v. U.S., 195 U.S. 27 (1941).

[10] U.S. v. Sanchez, 340 U.S. 42 (1950). See also: Megnano Co. v. Hamilton, 229 U.S. 40 (1934) and Sonzinsky v. U.S. 300 U.S. 506 (1937).

[11] For a detailed exposition of Jefferson's views on the subject see: III Writings of Thomas Jefferson, pp. 147-49 (Library Edition, 1904). Jefferson explained his point of view in the following fashion: "They (Congress) are not to lay taxes ad libitum for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only lay taxes for that purpose."

[12] Hamilton's views may be found in The Federalist, No's. 30 and 34.

[13] See: U.S. v. Gettysburg Electric Railroad Co., 160 U.S. 668 (1896).

[14] 297 U.S. 1 (1936).

the tenth amendment and on that ground the Court ruled that Congress could not use moneys raised by taxation to "purchase compliance" with regulations "of matters of State concern with respect to which Congress has no authority to interfere." Shortly over a year later this decision was reduced to narrow proportions when the Court sustained a tax imposed on employers to provide employment benefits, and the credit allowed for similar taxes paid to a state. The Court held flatly that the relief of unemployment was a legitimate object of federal expenditure under the "general welfare clause."[15] It seems clear that this concept of cooperative federalism would be controlling in any national programs of large scale cropland withdrawal.

The taxing and general welfare clauses have an additional advantage to recommend themselves as a constitutional peg on which to hang federal land withdrawal programs, whether they involve outright purchase of the land by the federal government or programs of indirect regulation and control. The Court has made it clear that neither a state nor an individual is entitled to remedy in court against a questionable or even unconstitutional appropriation of national funds.[16] Some might argue, therefore, that if these clauses of the Constitution are used as a basis, any land-use law passed by Congress would be beyond challenge so long as it fulfilled due process requirements and assured the equal protection of the laws to persons affected.

Another technique which might be used as a method by the national government or even the states in cropland withdrawal programs is the use of zoning regulations. The legal theory behind zoning is that states through the exercise of their police powers may declare that in certain cases and localities specific businesses which are not nuisances per se are deemed nuisances in fact and in law.[17] The Supreme Court has ruled that before a use-zoning ordinance can be held unconstitutional, it must be shown to be clearly unreasonable, arbitrary and to have no substantial relation to the public health, safety or general welfare.[18] While the Supreme Court for years had refused to accept zoning for aesthetic reasons only, this view was completely altered in Berman v. Parker (1954) when Justice Douglas for a unanimous

[15]Steward Machine Co. v. Davis, 301 U.S. 548 (1947).

[16]See: Massachusetts v. Mellon and Frothingham v. Mellon 262 U.S. 447 (1923); and Alabama Power Co. v. Ickes, 302 U.S. 464 (1938). A more recent case which suggests an implied obligation of the U.S. Supreme Court to review the validity of taxpayers' suits brought in state courts where a federal question is involved is contained in Doremus v. Board of Education, 5 N. J. 435, 75 A. 2d 880, 342 U.S. 429 (1952).

[17]Reinman v. Little Rock, 237 U.S. 171 (1915).

[18]For example, see: Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Zahn v. Board of Public Works, 274 U.S. 325 (1927); Cusack Co. v. Chicago, 242 U.S. 526 (1917).

court accepted aesthetics as a proper public purpose in its own right.[19]

Recent programs of rural zoning have also met the test of constitutionality and appear to be functioning successfully in states such as Wisconsin.[20] It would seem that the broad-scale planning concepts implicit in the zoning concept might also be utilized on a national scale concerning agricultural croplands with additional advantages not necessarily to be found in the use of the constitutional techniques discussed earlier.[21] For example, the Soil Bank program might be regarded as one form of zoning.

From the foregoing it should be clear that no major legal or constitutional obstacles at present exist to prevent programs aimed at removing excess agricultural cropland from production. The major impediments are, of course, political and socio-economic in origin. At this point it is necessary to try to identify and analyze some of the major administrative and financial problems for purposes of arriving at a feasible and realistically functional program.

Financial and Administrative Considerations

It is patently obvious that any governmental program that contemplates the withdrawal of between 45 to 80 million acres of surplus croplands will be financially costly. This will be true whether a plan for outright purchase of the lands is adopted or if financial aids are offered to the private owners to continue ownership of the land but keep it out of food crop production. While such programs conceivably could be sponsored by either the local, state or national governments, the enormity of the financial outlays involved is such that only the national government seems equipped to undertake the major burden of responsibility. This is not to suggest that states cannot develop complementary programs of this type on a smaller scale. Approaches such as Wisconsin's Forest-Crop Act, which exempts from state property taxed lands placed in extensive and controlled reforestation programs with the state and the private owner sharing the profits from the ultimate sale of marketable timber, can do much to

[19] 348 U.S. 26 (1954).

[20] See for example: G. G. Waite, "Land use controls and recreation in northern Wisconsin," 42 Marq. L. Rev. 271 (1959).

[21] For an excellent discussion of the legal and practical advantages and problems involved in the use of zoning regulations as planning aids see: "Planning in a democracy," A Symposium, 20 Law and Contemporary Problems 197 (Spring, 1955).

reduce the number of acres devoted to food crop production. Moreover, state rural zoning laws might be directed toward preventing additional croplands from being activated.

Two practical factors militate against any plans to use local governments, such as the county, as the chief sponsoring agencies of broad and systematic programs of land use control. First is the fact that population is diminishing noticeably in most of the strictly rural counties, with the result that the general tax base becomes sharply limited. Second is the fact that there is at least the normal increase of interest in these areas in seeing governmental services expanded in fields such as health, welfare, relief and highways. As a result, in those counties where there is the greatest justification for surplus cropland withdrawal the local governments already have reached the breaking point insofar as their financial abilities are concerned. It is impractical to think, given the present tax arrangement, that they could take on any new programs of the magnitude implied in proposals for cropland withdrawal.

With property taxes the significant burden on rural farm properties, a means of retiring croplands might be suggested by those who are not particularly burdened with humanitarian considerations. This would be to either remove or add no additional tax assistance devices such as agricultural land tax credits. Thus rural land taxes would move inexorably upward to a point where it is conceivable that significant amounts of marginal land might revert to the state because of tax delinquency. Something similar to this occurred in northern Michigan, Wisconsin and Minnesota during the 1930's. In this event the state governments might then adopt a formal policy of refusing to re-sell such lands to private persons or to sell only with the stipulation that these lands could not be used for food-crop production.

Such an approach has two major shortcomings at least. In the first place, it would work a severe hardship upon rural property owners during the transition period when some owners were in the process of being forced off the land. Secondly, it could clearly accelerate the out-migration from rural counties, with the subsequent reduction in tax revenues and diminution of retail and wholesale trade. Thus objections would be forthcoming not only from the farmers but from merchants and private businessmen generally.

From the standpoint of adopting an efficient administration for handling a major program of cropland withdrawal from production, the state and local governments are hardly in a position to take the initiative. In most instances their administrative structure for dealing with strictly local issues is so cumbersome,

outdated and consequently ineffectual that it is difficult to perceive how an entirely new program could be handled effectively. On both the state and county levels the absence of executive power, or the sharp limitations placed on the executive, are such that a minimum of centralized direction or responsibility can be shown for programs traditionally falling within the state's jurisdiction. This problem tends to be compounded when new programs are introduced.

Alternative Federal Programs

Thus it would seem that the federal government of necessity must take the lead in developing the administrative structure under which land withdrawal programs must operate. This is not meant to imply that the state and local governments need be ignored. Indeed there may be some merit in decentralizing the day-to-day administration of such programs into the hands of the states or county groups such as agricultural stabilization and conservation committees. The local operation should, however, be confined within boundaries carefully stipulated by the federal government similar to requirements for uniform accounting systems, and definite local agency responsibility in handling the programs such as are prescribed in most grant-in-aid plans at present.

If one accepts the premise that the most effective way to obtain an administratively acceptable and financially feasible plan of large-scale cropland withdrawal is through the actions of the national government, a variety of program actions are possible.[22] A most sweeping proposal would call for outright purchase by the federal government of excess croplands. This land could then be held as part of the public domain with broad scale planning concepts applied whereby it might be utilized as national parks or recreational and conservation districts.

Opposition to such a program would probably come from associations of local governmental officials who would object to the removal of extensive areas from the tax rolls, thus lowering even further the tax base and certainly diminishing drastically the need for local governmental officials — especially if entire counties were acquired by the federal government. Merchants and businessmen of the cities and towns in the region could be counted

[22]Several aspects and problems involved are discussed in: "Federal regulation of agriculture: conflict between economic reality and social goals," 5 J. Public Law 248, 1956; D. Gale Johnson, "Government and agriculture: is agriculture a special case," 1 Jour. Law and Econ. 122, 1958.

upon to object to what seems, at first blush, a significant diminution in their sales potential. This objection might be partially answered by likely offsetting increases in trade that might occur from an enlarged tourist or vacationer influx into the area as a result of increased recreational facilities.

It is important in evaluating the advantages of a program of this type to include a host of intangible factors which do not submit to the balance sheet approach intrinsic in the traditional benefit-cost analyses. Although research efforts are being made in this direction, a host of intangible elements defy ready reduction into monetary equivalents. Among factors of this sort are: scenic and recreational values, including the aesthetic asset of additional wildlife; the saving of human life and property through broad planning ventures of flood control; the general strengthening of national security through a better balanced economy, and through greater recreational opportunities for the increasing leisure time of the population. Unfortunately most governmental agencies up to this time have been unwilling to recommend policies or programs based upon such forms of economic evaluation of extra-market values.

There are, of course, a variety of possible cropland withdrawal programs that are less broad in scope or which might operate within the framework of agricultural programs presently in existence. For example, a federal price-income support program including a provision for compulsory land retirement might be one approach. Under such an arrangement land removed from food-crop production could receive support payments based on 100 percent of parity. If this approach was followed, the present administrative hierarchy could be utilized. It would also have the advantage of keeping private lands within the tax-rolls, thus providing the necessary revenues for local and state governmental operation. This plan, however, appears to lack the broad planning potential and workable safeguards that would need to be devised to insure that sufficient land was taken from food-crop production to provide a meaningful solution of the overproduction problem.

Another possible approach would be to adopt a land retirement program based upon a national or regional compulsory conservation farm plan similar to the optional programs provided by the Soil Conservation Service. Within this approach, an index of land classifications could be devised similar to those presently used by the Soil Conservation Service. This index could then serve as a basis for removing specific segments of land on a farm or in a region from production on a compulsory basis with direct or indirect compensation granted for the losses in income

suffered from the retiring of such land. Indirect governmental assistance to compensate private owners for the losses suffered in the removal of land could come in the form of tax assistance or tax relief devices from either the national, state or local governments. Because of the difficulty local governments are encountering in obtaining necessary operating revenues, it is unrealistic to assume that they would or could take primary responsibility in initiating such programs. It would be possible, however, for a national program of payments in lieu of taxes to be established to assist the state or local governments in offsetting the loss in tax revenues resulting from this type of land withdrawal program.

THE POLITICS OF NATIONAL LAND USE ADJUSTMENT

It is assumed that a crux of the American farm problem is one of immediate and persistent overproduction of food products, particularly grains. To alleviate this condition we have been examining the possibility that our national policy should be one of increasing the withdrawal of grain-producing farm lands. A decrease in the amount of land under production would, to an undetermined extent, also bring about a reduction in the number of farmers and, perhaps, in capital investment within the farming enterprise.

To bring about a policy of this type, and to view its consummation in political terms, it is necessary to consider the issue of political feasibility within a constitutional-democratic political system.

The issue then becomes: How can the idea of land use adjustment be translated into terms of political reality? What kind of fusions of political ideas, interests and institutions will have to be brought about, within the context of the United States Constitution, if this proposal is to become national legislation? The high costs of existing farm programs, the crucial importance of food costs to the urban consumer and the uses of food and fiber as a tool in American foreign policy have imposed upon the proposal of additional land use adjustment a political dimension which makes it an issue of national and international significance. Consequently, the farm problem needs to be acted on within the general context of national politics and should not be posed and resolved solely by the farmer and the farm organizations operating within the framework of "Committee Government" in Congress.

The federal Constitution was constructed in such a manner

that the centralization of power in political institutions has been extremely difficult to bring about. The diffusion of power has weakened our political parties but has strengthened the growth and power of pressure, or interest, groups in the United States. All democratic nation-states today, apparently, are pluralistic to the extent that many interest groups are prevalent in their political system.[23] There is really no democratic alternative.

Interest groups are to free government as air is to fire, to use James Madison's analogy. Without the one, the other would perish. Nevertheless, this pluralism has meant that policy is made through the interactions of interest groups, public and private. In the case of agriculture, this means the office of president, the farm organizations, certain types of business groups, key committees and individuals in Congress, the United States Departments of Agriculture and Interior and the Farm Credit Administration. What the secretary of agriculture wants in the way of farm policy he will get, assuming that the president will back him with the veto weapon, or, he — the secretary — will at least be able to deny other interest groups the kind of legislation which they desire.

The foregoing outline of the process of policy formation is an oversimplification, but it is useful for the purpose of presenting the Soil Bank Act, more accurately referred to as Title I of the Agricultural Act of 1956.[24] The Democratically-controlled 84th Congress had passed H.R. 12 which, among many other features, provided for 90 percent of parity supports for the basic commodities. On final passage the House voted favorably 237 to 181.[25] The Senate passed the measure without a roll-call vote. However, the House failed to override the presidential veto by even a majority, much less the required two-thirds.[26]

The president — or, more pertinently, the secretary of agriculture — wanted to attack the problem of overproduction and low farm income through the devices of lower support prices and the Soil Bank. The Democratic majorities in Congress were amenable to the Soil Bank provisions (which were a part of H.R. 12) but had included high price support provisions too. This was the primary reason for the veto.

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[23] H. W. Ehrmann (ed.), Proceedings and Papers, International Polit. Sci. Assoc., Pittsburgh, 1957.

[24] The Soil Conservation and Domestic Allotment Act of 1939 was designed to reduce in quantity the "soil-depleting" crops, but its legislative history will not be developed in this chapter. In actual operation, the ACP program has probably increased production and improved conservation practices at the same time.

[25] For - Dem. 189, Rep. 48; Against - Dem. 35, Rep. 146.

[26] The vote was 202 to 211. (For - Dem. 182, Rep. 20; Against - Dem. 38, Rep. 173.)

The substitute bill[27] then passed both Houses by substantial margins but not without some procrastination. One of the apparent and basic facts about our congressional process is that national elections are always impending. In this instance the legislation was enacted during a presidential election year but late enough so that the economic impact would not be significant until 1957. The political and the economic factors became intertwined — a not unusual situation. Who was to get credit for the Soil Bank payments? Would a "gentle rain of checks" redound to the benefit of the Republicans or the Democrats? Acreage reserve payments were authorized (although never fully appropriated) for up to $750 million a year from 1956 through 1959; in addition, conservation reserve payments up to $450,000,000 a year were authorized, with contracts running from 3 to 15 years.

The prime difficulty with the operation of the Soil Bank program, in terms of congressional politics, is that it has had a low degree of acceptance with those members of Congress who are powerful in the area of farm policy. There has been some support on the Republican side of the House and Senate Agriculture Committees, but even here the backing has been qualified and rather restrained. The Democratic members, particularly those from the South, have been outwardly and aggressively critical. The chairman of the powerful Sub-committee on Agriculture of the House Committee on Appropriations — Jamie Whitten (Dem., Miss.) — has been outspoken in his opposition and criticism. However, his counterpart in the Senate — Richard Russell (Dem., Ga.) — has, on occasion, displayed some agreement with the Soil Bank type of program, even of an extended type.[28]

What has brought about the opposition in Congress? In general, the answer would appear to be that the Soil Bank program has brought in its administrative wake certain social and economic changes which have disturbed the economic and social status quo. These changes, in turn, have forecast some revisions in the political power structure.

Senator Sparkman (Dem., Ala.) stated the anti-Soil Bank case quite pointedly: "...the small businesses which have been serving the farmers, namely, the ginners, the fertilizer dealers, the implement dealers, and other small businesses of that kind, have

[27] H.R. 10,875, 84th Cong., 2nd Sess., 1956.

[28] Senator Russell: "I saw the other day where a man introduced a bill to buy $25 billion worth of land. That may be the answer to it [farm problem], something of that kind. Let the Government buy it up and retire it permanently and have some program where they can sell it back to the farmers as the needs of our civilization require additional lands to be opened up." U.S. Congress, Senate, Hearings Before the Subcommittee of the Committee on Appropriations, 85th Cong., 2nd Sess., Washington Government Printing Office, 1959, p. 597.

been severely effected."[29] Congressman Hemphill (Dem., S. Car.) claimed that "our relief rolls are filled with farmers literally put out of business by the Soil Bank. This is particularly true of the colored population of the Southeast who know no other trade."[30]

Senator Milton Young (Rep., N. Dak.) commented: "I would have to vote against additional funds for a program that would take a whole farm out of production" and, further that "both farm organizations in my State [North Dakota Farmers Union and North Dakota Farm Bureau] passed resolutions opposing it [conservation reserve program]."[31] Senator Dworshak (Rep., Idaho) also noted that in his state there was " . . . widespread criticism of the soil bank program."[32]

Assistant Secretary of Agriculture Marvin McLain concurred that "down in the South" the major complaints of the Soil Bank program came from "the cotton ginners, fertilizer sellers and the people that were in the business of handling the commodity."[33]

Whitten remarked that "a fellow from Alabama told me that he put his farm in the soil bank, and put his money in the First National Bank, and he is going down to the fishing bank."[34] In a much more serious vein, USDA testimony made the following calculation: "It is estimated that farm operators [in 1957] will pay out about $360 million less in production expenses, as a direct result of their participation in the acreage reserve program" and that "marketing charges on the quantities of wheat, corn, cotton, rice and tobacco not produced as a result of the acreage reserve program are estimated at about $180.5 million. About $55 million of this amount would have been marketing charges in local markets."[35]

On the administrative side, the Soil Bank program has produced further repercussions. Perhaps members of Congress are, at least on occasion, more eloquent than accurate, but in early 1958 Senator Talmadge (Dem., Ga.) let forth the following denunciation: "Mr. President, what little faith the farmers might have had in the Department of Agriculture has been destroyed by the arrogant deceit and stupid bungling which have marked the signup for participation in the cotton acreage reserve program of the soil bank for 1958."[36]

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[29] U.S. Congress, Congressional Record, 85th Cong., 2nd Sess., Government Printing Office, Washington, D. C., 1958, p. 3953.
[30] Ibid., p. 7083.
[31] U.S. Senate, Agricultural Appropriations for 1960, pp. 586-87.
[32] Ibid., pp. 588-89.
[33] U.S. House of Rep., Dept. of Agriculture Appropriations For 1959, Part 3, p. 2154.
[34] Ibid., (1958), Part 4, p. 1573.
[35] Ibid., p. 2111.
[36] Congressional Record, 85th Cong., 2nd Sess., 1958, p. 2205.

Congressman Dorn (Dem., S. Car.) was even more derogatory: "Mr. Speaker, ... it is inhumane and unthinkable that elderly people and those afflicted with physical infirmities are required to stand in line all night in the cold and rain to have their applications considered. Mind you, Mr. Speaker, these applications are scheduled in the dead of winter."[37] These statements hardly indicate fulsome praise for the administration of the Soil Bank program, although they do seem to point to a certain hardy steadfastness and desire to participate in it.

More significantly, the acreage reserve program received much unfavorable national publicity because of the amounts of the payments. Senator Williams (Rep., Del.) stated that, in 1957, there were 2,422 individuals who received in excess of $10,000 in payments; that 1,260,000 farmers received almost $614 million (an average of $487 per person) for removing 22 million acres from production.[38] Nationwide publicity was given Senator Proxmire's (Dem., Wis.) charge that three individuals, or corporations, received $322,012, $278,187 and $209,701, respectively, in acreage reserve payments in 1957.[39] Whether this was a wise use of public funds was, of course, widely debated.

Adding to the adverse publicity was Senator Ellender's (Dem., La.) claim, on the Senate floor, that "when the 1956 [corn] crop was gathered, we found ourselves paying almost $180 million, but 220 million more bushels of corn had been produced than in the previous year."[40] These views and figures were, it would seem, widely disseminated; whether or not they were accurate is not the point at issue.[41]

Congressional criticism of the conservation reserve program has been directed largely against taking whole farms out of production. This procedure may reduce production but it also reduces a political commodity — farmers. Congressman Anderson (Rep., Minn.) has been favorably disposed to the Soil Bank program, but even he has expressed his dislike of the "whole farm" approach and wants no more than 50 percent of a farm to be

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[37] Ibid., p. 2084.

[38] Ibid., pp. 9273-74.

[39] Ibid., p. 3742. Senator Neuberger (Dem., Ore.) also made a similar criticism — 67 farmers received more than $50,000 each in acreage reserve payments in 1957. 47 of the 67 were from California, Oregon and Texas (Ibid., p. 6781).

[40] Ibid., p. 3743.

[41] The USDA's estimates of the amounts of decreased production brought about by the conservation reserve program are contained in a departmental Press Release, Jan 29, 1960. Corn production, for example, was some 183 million bushels less in 1959 than it would have been without the conservation reserve, according to USDA calculations.

eligible for the conservation reserve.[42] USDA officials have fought against such restrictions by claiming that, in some instances, the farmer needs "...to relocate or establish himself in some other more satisfying endeavor," and that a "part farm" approach would bring in the poor land and the farmer would then, in all probability, increase the production on the remainder.[43] These criticisms have, however, pushed the USDA into a compromise situation since under the 1960 conservation reserve program no more than 25 percent of the farm land in a county can be placed in the reserve.

Criticisms of administrative regulations have also occurred in regards to the maximum payment an individual might receive under the conservation reserve program. The early restriction of $3,000 "to any one producer" was interpreted by the secretary of agriculture — upon advice of the department's General Counsel and the General Accounting Office — to mean per farm, not per farmer. Such an interpretation, which ostensibly assisted tenant farmers to receive some of the Soil Bank funds, was widely criticized. The present restriction of $5,000 per farmer for conservation reserve payments has also been attacked because certain ingenious individuals have discovered a few possible loopholes in the law, at least such was indicated by the evidence of the General Accounting Office in 1959.[44]

The ideological issue has also slipped into the debate at this point. Senator Proxmire (Dem., Wis.) remarked: "Since the amount of money available [for soil bank payments] always is limited, the farmer who has a small family-size farm should have the first 'crack' at it."[45]

The national farm organizations — notably, the American Farm Bureau Federation, the National Farmers Union and the National Grange — were not aggressively committed to the Soil Bank approach in its early stages. Their acceptance of the so-called Soil Bank Act in 1956 was probably predicated on about the same reasoning as used by Whitten: "...it is a relief bill made necessary by the decline in farm income"[46] and that "...the chief argument I can see for the soil bank idea is that it has become

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[42] U.S. House of Representatives, Department of Agriculture Appropriations For 1960, pp. 2203-4.

[43] Ibid., pp. 2202 and 2204.

[44] The Comptroller General of the United States, Review of the 1959 Conservation Reserve Program, Commodity Stabilization Service, Dept. of Agriculture, Dec., 1959, pp. 31-40.

[45] Congressional Record, 1958, pp. 3743-44.

[46] Ibid., p. 2751.

absolutely apparent that some form of purchasing power is going to have to be put into the hands of the farmer."[47]

Since the program has been in operation, its acceptance by two of these farm groups has declined. The National Farmers Union is clearly opposed to the "whole farm" provision, according to their publication: Official Program for 1959, and recently James Patton, president of the Farmers Union stated: "As you know, the Soil Bank has not been generally popular in areas where it was used to the greatest extent. We must put the emphasis back on conservation and land use adjustment within the fence lines of operating farms."[48]

The National Grange has not been openly hostile to the program, but their policy position has rather approximated that of the Farmers Union. Any extension of the Soil Bank program should, in their opinion, come about within the framework of some type of a guaranteed price support program, notably of a marketing certificate type.

At the 1959 annual convention of the American Farm Bureau Federation, it appeared that at least some of the Farm Bureau officials were skeptical of the efficacy of the Soil Bank approach, despite the quality and vigor of its espousal by Dr. Carroll Bottum. Nevertheless, in the Farm Bureau's official program, Policies For 1960, an expanded conservation reserve program was advocated. Subsequent public announcements, congressional testimony, and their advocacy of the Hagen-Thomson bills[49] showed that the Farm Bureau favored raising the amount of land in the conservation reserve to 60 million acres within a three-year period. However, it would seem that the Farm Bureau's support for such an expanded acreage is based on congressional acceptance of the Farm Bureau's market price formula for wheat.

The Soil Bank Program — 1960 Version

The acreage reserve program expired at the close of calendar 1959. The conservation reserve program will continue until 1970, assuming that Congress continues to provide the necessary

[47] U.S. House of Representatives, Dept. of Agriculture Appropriations For 1957, p. 220.

[48] Statement of James G. Patton on General Farm Income Improvement Legislation before the House Committee on Agriculture, Feb. 29, 1960, p. 3.

[49] H.R. 10,666 - Hagen, Dem., Calif.; and H.R. 10,774 - Thomson, Rep., Wyo.

appropriations for the consummation of existing contracts.[50] However, we are primarily concerned here with the extension of the Soil Bank program, or at least some type of land retirement system. Consequently, is it probable that Congress will act in this session (86th -2nd) to provide for a Soil Bank of some 60-70 million acres? If so, how will this amount of land be retired, and where?

The American political system moves most dynamically when the president provides the principal motivating power. On Feb. 9, 1960, President Eisenhower, in his farm message to Congress, said: "...I urge an orderly expansion of the conservation reserve program up to 60 million acres, with authority granted the secretary of agriculture to direct the major expansion of this program to areas of greatest need."[51] The president's "guidelines" were rather flexible and did not seem to close the door to some type of a production control plan, although Secretary Benson did appear to close it a few days later.[52] However, the president and his secretary of agriculture are committed to a very substantial increase in the conservation reserve program. What kind of a "package deal" they would accept is still not clear.

The background of the congressional scene relative to Soil Bank legislation has already been outlined. Some type of policy action seems to be mandatory, particularly in regard to wheat. In early February, President Eisenhower noted that federal funds tied up in wheat approximate $3\frac{1}{2}$ billion. But what kind of a wheat, or general farm, program? Should we take the "free market" approach of the president-secretary of agriculture and that of the Farm Bureau; or the "production control" route that is advocated by an alliance of congressional Democrats-National Farmers Union — National Association of Wheat Growers — and, somewhat passively, by the National Grange? We need not concern ourselves with the "politics of choice" except to note that either approach calls for a substantial increase in some form of Soil Bank.

The Poage (Dem., Tex.) - McGovern (Dem., S. Dak.) bills[53]

[50] Through 1958, the conservation reserve contracts ran approximately as follows:
5 percent - 3 year contracts
60 percent - 5 year contracts
35 percent - 10 year contracts
(U.S. House of Representatives, Department of Agriculture Appropriations For 1960, p. 2212)

[51] U.S. House of Representatives, Message from The President of The United States, Relative to Our Problem in Agriculture As It Relates to Excessive Production of Certain Farm Products, 86th Cong., 2nd Sess., 1960, Document No. 330, p. 2.

[52] Des Moines Register, Feb. 15, 1960.

[53] H.R. 10,355 and 10,563, respectively. These bills represent the legislative efforts of the latter coalition.

would require, if approved by nationwide referendum, that 10 percent of the tillable acres of a farmer must be retired without rental payment, and up to 30 percent of additional tillable acres could be taken out of production with the possibility that payments would be in kind. These bills – sometimes referred to jointly as The Farm Family Income Act of 1960 – include all farm commodities, with the exceptions of tobacco, sugar and wool.

After much deliberation and negotiation, the Farmers Union, Grange and the National Association of Wheat Growers developed a marketing program for wheat which would be acceptable to them, if the Poage-McGovern bill proved to be politically inexpedient. Under the provisions of these bills,[54] wheat growers would have to retire 10 percent of their wheat base each year without rental payment, and, if funds were available, they could put an additional 10 percent of their wheat base in the land retirement program.[55]

The Farm Bureau-sponsored bills have already been outlined: The conservation reserve would be increased to 60 million acres within 3 years, and 17 million of those acres would come from the wheat areas. Senator Hickenlooper (Rep., Iowa) introduced a quite similar measure in early April, 1960.[56]

It may be that no important farm bills will be passed in 1960. At this point the decision seems to be in the hands of a few centers of power in Congress, the national farm groups and the USDA. Of the other public interest groups the Department of Interior might be of some assistance in advancing a Soil Bank program, but that department is caught on the horns of a dilemma: the drive to increase irrigated land in contrast to the need for more conservation for various recreational purposes.

One of the ironies of present-day American politics is the support given the present farm programs by the policymakers in the Department of Interior, notably the Bureau of Reclamation. Program costs, it is argued, are not excessive; population is increasing in a Malthusian fashion; and land is becoming a scarce resource. To some extent these arguments are, perhaps, of a self-enhancing type, but the reader is led to the conclusion that implicit therein is a belief in "The Fifth Plate" (world food shortage) philosophy. The Department of Interior's support of present farm programs, at least as these programs are involved

[54] H.R. 11,011 - Breeding, Dem., Kans.; and S.3159 - Carlson, Rep., Kans.

[55] The National Grange, Marketing Program For Wheat, March 7, 1960, 3 pp.

[56] American Farm Bureau Federation, Nation's Agriculture, "New 4 point wheat plan," March, 1960, pp. 12-13, 25; also the AFBF's Official News Letter, March 21, 1960.

The Senate bill was S.3335; co-sponsors were Senators Lausche, Dem., Ohio, and Dirksen, Rep., Ill.

directly in the production of farm products, is clearly more positive and vocal than that of the USDA.[57]

The dilemma arises in the area of purpose and objective. The Fish and Wildlife Service has worked closely with the USDA's Soil Bank Division in instituting fish and wildlife conservation practices. The Service disagrees, however, with the USDA in regard to the latter's wetlands policy:

> ... in that wetlands without a crop history are not considered by the U.S. Department of Agriculture to be eligible lands under the program.... The Soil Bank is a potential opportunity to compensate owners for maintaining wetlands as wetlands; and this, in our [FWS] view, would be in the public interest.[58]

Nevertheless, there has been some coordination and cooperation between the two departments, within the Soil Bank program, in the development of wildlife habitat areas and the construction of dams and ponds.[59]

The National Park Service has been conducting extensive studies of the future demand for nationwide recreational facilities under its Mission 66 program. Although the projected demand for additional areas appears to be quite evident and considerable, the Soil Bank program will be of little value in achieving the goals of the program. The Service does note, in a recent study on the Missouri River Basin, the considerable need for added recreational areas.[60] However, about the only proposal that is at all specific is for "... an example ... of the prairie lands which once stretched across the central United States."[61]

The Outdoor Recreation Resources Review Commission has not given any particular consideration as yet to the possible recreational value of land in the conservation reserve, but plans to do so.[62]

The private interest groups that are involved in conservation and recreational activities have given little testimony before congressional committees relative to the land in the conservation

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[57] For example, the address by William I. Palmer, asst. commissioner, Bureau of Reclamation, before the Sprinkler Irrigation Assoc., March 15, 1960 (Dept. of Interior Information Service Release, March 15, 1960).

[58] Letter, A. V. Tunison, acting director, Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Dept. of Interior, to Ross B. Talbot, March 9, 1960.

[59] U. S. Senate, Agriculture Appropriations for 1959, op. cit., pp. 583-87.

[60] National Park Service, Dept. of Interior, Recreation - Today and Tomorrow in the Missouri River Basin, Washington, Govt. Printing Office, 1959, p. 54 (Map - Plate 9).

[61] Letter, Ben H. Thompson, Chief, Division of Recreation Resource Planning, National Park Service, Dept. of Interior, to Ross B. Talbot, Feb. 11, 1960.

[62] Letter, Norman Wengert, Deputy Director for Studies, Outdoor Recreation Resources Review Commission, to Ross B. Talbot, Feb. 16, 1960.

reserve program. The Wildlife League did testify in behalf of the Soil Bank plan,[63] but the support of these interest groups is not evident in the appropriation hearings.

Assistant Secretary of Agriculture McLain observed that, in his opinion, the consumer has been in support of the program:

> I have talked to many consumer groups and I have talked with many consumers and I have yet to find a consumer who is not in full sympathy, with the approach of this [soil bank] program. He thinks just what I have said: It is wiser to keep our reserve in the ground rather than pile it up here and lose the value of it by storage costs, transportation costs, and so forth.[64]

Perhaps so, but consumer interests in the United States are not recognized as being politically articulate in the halls and committee rooms of Congress.

Thus, the immediate political situation of the Soil Bank program in Congress looks about as follows: (1) the whole area approach is a political impossibility at this time. No interest group, public or private, is sponsoring any such legislation. (2) The whole farm approach might be increased in scope but only, it would appear, if there are some definite restrictions on the number of whole farms that could go into the Soil Bank within a given area, e.g., perhaps not more than 25 percent of the farms per county. (3) The part-farm approach is certainly a political possibility. Just how much land this would put in the Soil Bank would be a hazardous guess: a good deal if the Poage-McGovern bill should pass as is, and not be vetoed; quite a lot less if only a wheat bill goes through Congress and the 1958 Corn Act is left untouched.

SUMMARY

To conclude, the premise has been accepted that an extensive land retirement program would be in the national interest of the United States. It would remove a portion of an important natural resource from food production, and the resource itself could then be used to pursue other national goals, such as soil conservation, recreation and flood control. Nevertheless, there is little, if any, evidence available which leads one to conclude that Congress is proceeding in any other than its traditional piecemeal, interest-oriented fashion. The bald fact seems to be that the primary

[63] U.S. House of Appropriations, Dept. of Agriculture Appropriations For 1959, op. cit., p. 2027.

[64] Ibid., 1960, pp. 2213-14.

reason why we have a Soil Bank is because it had political vote-getting possibilities in that the payments would augment the farmer's declining income. If the Soil Bank legislation is extended during this Congress, the principal motive for doing so will probably remain the same.

However, this is not a plea for pessimism or despair. The American political system functions by brief spurts followed by long periods of political sparring. The year 1961 might well be one of genuine accomplishment. There will be a new administration; it will have a program of some considerable magnitude. If Congress is politically amenable, a good deal might be accomplished in the coming session. The ideas, analyses and plans presented in this volume need not fall on plowed soil; rather these efforts may be of some valuable assistance in the fostering of a situation in which large portions of this soil will have a cover crop.