



# Food Law & Policy: The Fertile Field's Origins and First Decade

## Citation

Baylen J. Linnekin & Emily M. Broad Leib, Food Law & Policy: The Fertile Field's Origins and First Decade, 2014 Wis. L. Rev. 557 (2014).

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## **FOOD LAW & POLICY: THE FERTILE FIELD'S ORIGINS AND FIRST DECADE**

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Legal knowledge, learning, and scholarship pertaining to the production and regulation of food historically centered around two distinct fields of law: Food & Drug Law and Agricultural Law. The former focuses on the regulation of food by the Food and Drug Administration under the Food, Drug, and Cosmetic Act, while the latter examines the impacts of law on the agricultural sector's production of food and fiber. Neither field—alone or in tandem—focuses in whole or in part on many of the most pressing legal issues that currently impact our food system. Consequently, elements of these two fields converged roughly one decade ago to create a significant and distinct new field of legal study: “Food Law & Policy.” This field explores legal and policy issues well outside the scope of Food & Drug Law and of Agricultural Law to address important questions about food that had never been explored fully within the legal academy. Food Law & Policy embraces a broader study of laws and regulations at all levels of government that impact the food system—covering everything from local regulations pertaining to farmers’ markets or food trucks to federal policies pertaining to obesity or hunger. Food Law & Policy now enjoys a strong and growing presence throughout the legal academy. This Article introduces ten categories of original empirical data to document the field’s vitality—including figures on law school courses, legal scholarship, clinical legal programs, and student societies at U.S. law schools. It details the past and present of Food & Drug Law and Agricultural Law alongside that of Food Law & Policy. The Article demonstrates that Food Law & Policy has proven to be a timely and vibrant addition to the legal academy and suggests next steps in the ongoing development of the field.

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\*\*\* The authors wish to thank Professor Peter Barton Hutt, Professor Michael T. Roberts, and Professor Susan A. Schneider for graciously offering comments on drafts of this Article and would like to thank Tulane University Law School, New York University, Yale University, and the Southern Food & Beverage Museum for the opportunity to present early research related to this Article. The authors also thank Karissa Orris, Kathleen Eutsler, and Emma Kravet for their invaluable research assistance.

\*\*\*\* To watch a video companion to this Article, please visit <http://youtu.be/DSCiW9VgNdg>.

Introduction.....	558
I. A Brief History of FDA Law and Ag Law Pertaining to Food ...	562
A. A Brief History of FDA Law Pertaining to Food.....	562
B. A Brief History of Agricultural Law .....	579
II. The Birth of Food Law & Policy .....	584
A. The Field’s Distinguishing Characteristics.....	584
B. Establishing the Field .....	590
III. The Present and Future of FL&P.....	595
A. FL&P after One Decade .....	596
1. Academic Scholarship.....	596
2. Law School Courses.....	599
3. Degree Programs.....	602
4. Academic Centers .....	603
5. Casebooks and Other Texts.....	603
6. Dedicated Legal Journals .....	604
7. Clinical and Experiential Education.....	605
8. Student Societies .....	607
9. Professional Associations and Bar Groups .....	608
10. Academic Conferences.....	609
B. Comparative Summary of Data on Key Criteria .....	610
C. FL&P’s Next Five Years .....	611
Conclusion.....	612

## INTRODUCTION

*[F]ood law and policy is a subject that will never become obsolete.*

— Peter Barton Hutt<sup>1</sup>

*[T]here may be no hotter topic in law schools right now than food law and policy.*

— Spotlight at Harvard Law School<sup>2</sup>

In 2011, the authors of this Article organized and took part in a CLE panel in New Orleans that focused on dramatic recent changes in the

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1. Peter Barton Hutt, *Food Law & Policy: An Essay*, 1 J. FOOD L. & POL’Y 1, 11 (2005) [hereinafter Hutt, *Food Law & Policy*].

2. *For Clinical Students Interested in Food Law and Policy, a Cornucopia of Opportunities*, HARV. L. TODAY (June 1, 2013) [hereinafter *Cornucopia of Opportunities*], <http://today.law.harvard.edu/for-clinical-students-interested-in-food-law-and-policy-a-cornucopia-of-opportunities/>.

teaching of food law in the legal academy.<sup>3</sup> For generations, most law school courses on laws pertaining to food focused solely on *The Food Law*—the 1938 federal Food, Drug, and Cosmetic Act (FDCA)<sup>4</sup>—and the agency that enforces the FDCA, the Food and Drug Administration (FDA). These “FDA Law” courses, which began in the late 1940s,<sup>5</sup> taught students about all manner of regulations pertaining to products subject to FDA jurisdiction—including not just food but drugs, cosmetics, medical devices, and much more. While FDA regulation of food was at the heart of FDA Law in its early years,<sup>6</sup> drugs, cosmetics, and other topics—rather than food—came to dominate casebooks and class readings over time. As our research demonstrates, the predominance of non-food topics in FDA Law is still very much evident.

During the first half of the 1900s, another legal field emerged that focused in part on food: Agricultural Law (Ag Law). But just as FDA Law courses have focused mostly on issues unrelated to food, Ag Law courses focused on many non-food issues like access to farm credit and farm estate planning. While Ag Law and FDA Law are enduring, distinct, and important silos of American legal education, neither one alone nor the two in tandem adequately covers many of the legal issues that currently impact our food system.

Our CLE panel, *Food Law 2.0: Teaching Food & Law beyond the Food, Drug & Cosmetic Act*,<sup>7</sup> was perhaps the first to reflect on the fact

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3. See Emily Broad Leib, Margaret Sova McCabe, Michael T. Roberts & Baylen J. Linnekin, *Eating and the Law* CLE at the 2011 Words in Food Symposium and Annual Gala cosponsored by Southern Food & Beverage Museum and Tulane University School of Law: *Food Law 2.0: Food & Law beyond the Food, Drug, and Cosmetic Act* (Sept. 16, 2011).

4. Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. §§ 301, 393 (2012).

5. See *infra* Part I.A.

6. The Food and Drug Law Institute, which was instrumental in fostering FDA Law courses at various law schools around the country beginning in the late 1940s, was launched as the Food Law Institute. See *infra* Part I.A. Amendments to the FDCA in the 1960s, especially the Drug Amendments of 1962, shifted the focus of the FDA—and, consequently, FDA Law scholarship—in new directions unrelated to food. See, e.g., H. Thomas Austern, *Sanctions in Silhouette: An Inquiry into the Enforcement of the Federal Food, Drug, & Cosmetic Act*, 51 CALIF. L. REV. 38, 40–42 (1963) [hereinafter Austern, *Sanctions in Silhouette*] (citing the 1962 Drug Amendments as an example of how FDA-related laws have “fascinated . . . scholars”); Frances E. McKay, *Lawyers of the FDA*, 30 FOOD DRUG COSM. L.J. 621, 625 (1975) (noting three drug-related amendments to the FDCA). 1962 also marked the beginning of the FDA’s involvement in regulating “the packaging and labeling of a broad range of ‘consumer commodities.’” See Austern, *Sanctions in Silhouette*, *supra*, at 48.

7. In addition to the authors of this Article, the other panelists were Professor Margaret Sova McCabe of University of New Hampshire School of Law and Professor

that Ag Law and FDA Law had not only fused in important ways but had also given birth to a unique and important new field. This next generation, we argued, was best embodied in the growing number of law school courses that look well beyond FDA Law and Ag Law to address important legal issues pertaining to food that had never been fully explored in law school classrooms.<sup>8</sup> We join with others in using the term Food Law & Policy (FL&P) to describe this new family of law school course offerings.<sup>9</sup>

But what was the spark that brought FDA Law and Ag Law together to create FL&P? We theorized that the union developed largely due to a shared, unmet need in FDA Law and Ag Law. Much of the conversation about food outside of law schools—embedded in fields as wide-ranging as public health, behavioral economics, and urban planning—focuses on diverse issues that range from obesity to food trucks and on policies like sustainability and localization. But FDA Law courses focus almost unbendingly on federal acts and regulations pertaining to the authority of the FDA. Ag Law classrooms have a farm-first focus that necessarily deals in the minutiae of federal and state laws pertaining to those who grow “food and fiber.”<sup>10</sup> Neither FDA Law nor Ag Law courses leave room to focus on controversial current issues like New York City’s soda ban<sup>11</sup> or the contentious debate over parsing Supplemental Nutrition Assistance Program benefits out of the Farm Bill.<sup>12</sup>

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Michael T. Roberts of University of California-Los Angeles School of Law. See Broad Leib, McCabe, Roberts & Linnekin, *supra* note 3.

8. Baylen J. Linnekin, Exec. Dir., Keep Food Legal, Presentation at the Southern Food & Beverage Museum: Food Law 2.0: Teaching Food & Law beyond the Food, Drug, and Cosmetic Act: “Eating and the Law” CLE (Sept. 16, 2011), *available at* [http://southernfood.org/wp-content/uploads/2011/09/linnekin\\_foodlaw2.0.pdf](http://southernfood.org/wp-content/uploads/2011/09/linnekin_foodlaw2.0.pdf).

9. See *infra* Part II.B. We have chosen to use the title “Food Law & Policy” for this emerging field because, as illustrated throughout this Article, this moniker matches the course offerings, scholarship, student societies, and other new developments in the field. Others have identified a similar phenomenon developing out of FDA Law and Ag Law and have used other titles to describe what is essentially the same new legal field. See, e.g., Stephanie Tai, *Food Systems Law from Farm to Fork and Beyond*, 41 SETON HALL L. REV. (forthcoming Fall 2014).

10. See, e.g., Neil D. Hamilton, *The Study of Agricultural Law in the United States: Education, Organization, and Practice*, 43 ARK. L. REV. 503, 503 (1990) [hereinafter Hamilton, *Study of Agricultural Law*] (defining “Ag Law” as the study of the law of “food and fiber”).

11. See, e.g., Michael M. Grynbaum, *New York Soda Ban to Go before State’s Top Court*, N.Y. TIMES, Oct. 17, 2013, <http://www.nytimes.com/2013/10/18/nyregion/new-york-soda-ban-to-go-before-states-top-court.html>.

12. See, e.g., Jerry Hagstrom, *Proposal to Split Farm Bill Divides Congress*, NAT’L J. (July 8, 2013), <http://www.nationaljournal.com/daily/proposal-to-split-farm-bill-divides-congress-20130707>; Erik Wasson, *Farm Lobbyists Strike Back against Push to*

After conducting extensive research into FL&P, we are more confident today that the theory we originally proposed in our 2011 panel about the development of the field is correct. It turns out, however, that the unit of measurement we originally explored—*teaching* food law—is far too narrow a lens to reveal the full breadth of the field. Lawyers and law school faculty teach, but they also publish scholarly works, lead clinical programs, supervise legal journals, establish research centers, organize state and national committees, host and participate in conferences, publish casebooks, and engage in many other scholarly activities. Consequently, we compiled a range of metrics and data that demonstrate how FL&P has evolved and has begun to flourish in the legal academy. Our data show that the field has enjoyed rapid growth. For reasons described in this Article,<sup>13</sup> we mark 2004 as the birth of FL&P. As a result, this Article is well-timed to chronicle the development and growth of the field during its first decade.

In defining the origins and boundaries of FL&P, our research also compelled us to study the largely uncatalogued history of FDA Law scholarship pertaining to food. It was not our intent to produce a detailed chronology and analysis of FDA Law scholarship pertaining to food. We had intended instead to present something like the brief treatment we give to Ag Law in this Article. But while the history of Ag Law is one that numerous eminent scholars in the field have traced,<sup>14</sup> the history of FDA Law has gone essentially unrecorded and turns out to inform our evolutionary FL&P discussion in several important ways.

Part I of this Article describes the history of the field of FDA Law as it pertains to food and, to a lesser extent, the kindred history of the field of Ag Law. In Part II we define FL&P, discuss how it differs from FDA Law and Ag Law, and describe its early history. Part III presents a trove of new data evidencing the mounting number of FL&P law school courses, publications, scholarly articles, centers, and clinical programs. We identify and evaluate ten metrics that demonstrate that, by any number of measures, the field of FL&P is both thriving and growing. We also predict in Part III the ways in which the field of FL&P can and will

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*Split House Farm Bill*, THE HILL (July 2, 2013, 8:31 PM), <http://thehill.com/blogs/on-the-money/agriculture/308985-farm-lobby-strikes-back-against-push-to-split-farm-bill>.

13. See *infra* Part II.B.

14. See, e.g., Hamilton, *Study of Agricultural Law*, *supra* note 10, at 509–13; James W. Looney, *Educational Directions in Agricultural Law*, 38 ALA. L. REV. 567, 567–79 (1987) [hereinafter Looney, *Educational Directions*]. Ag Law's history and development have received substantial focus over the years and are encapsulated in various present-day writings by leading Ag Law scholars. See, e.g., Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 935, 941–42 (2010) [hereinafter Schneider, *Reconsideration of Agricultural Law*] (summarizing the history of Ag Law).

continue to expand over the next several years. Finally, we conclude that FL&P should be recognized as an important and maturing field of law, and we summarize our suggestions and aspirations for its ongoing development.

## I. A BRIEF HISTORY OF FDA LAW AND AG LAW PERTAINING TO FOOD

### A. *A Brief History of FDA Law Pertaining to Food*

In 1906, Congress passed the Pure Food and Drug Act,<sup>15</sup> legislation that launched federal regulation of the food supply and ultimately led to the creation of the FDA.<sup>16</sup> In 1938, Congress overhauled the 1906 Act by passing the FDCA,<sup>17</sup> which—though amended dozens of times—is the law of the land to this day. The FDA was subsequently wrested from its placement in the U.S. Department of Agriculture (USDA) in 1939 to be housed in its present home, the U.S. Department of Health and Human Services.<sup>18</sup>

Despite these important developments in the federal regulation of the food system, scholars paid little attention to food regulations throughout much of the FDA's early history. For example, notwithstanding widespread public interest in the safety of America's meat supply—spurred by the publication of Upton Sinclair's novel *The Jungle*<sup>19</sup> in 1906, and subsequent passage of both the Pure Food and Drug Act and the Federal Meat Inspection Act<sup>20</sup> that same year—legal publications at the time remained silent on the topic of government meat inspection.<sup>21</sup>

To be fair, as the 1930s dawned, legal scholarship had not blossomed in the United States in any area of law.<sup>22</sup> But the

15. Pub. L. No. 59-384, 34 Stat. 768 (1906).

16. See, e.g., John P. Swann, *FDA's Origin*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/AboutFDA/WhatWeDo/History/Origin/ucm124403.htm> (last updated Jan. 23, 2014) (adapted from A HISTORICAL GUIDE TO THE U.S. GOVERNMENT (George Kurian ed., 1998)).

17. Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. § 301 (2012). See *supra* note 4 and accompanying text.

18. § 393.

19. UPTON SINCLAIR, *THE JUNGLE* (1906).

20. Pub. L. No. 59-242, 34 Stat. 1260 (1906).

21. Roger W. Weiss, *The Case for Federal Meat Inspection Examined*, 7 J.L. & ECON. 107, 110 n.9 (1964) (noting that “the only article in a professional journal which touches on government meat inspection” appeared in a 1906 economics journal).

22. See Morris R. Cohen, *Justice Holmes and the Nature of Law*, 31 COLUM. L. REV. 352, 353 (1931) (“[T]he American bar of the past half-century has not been predominantly a scholarly profession . . . [as] lawyers have been too busy serving the

unprecedented increase in the size and scope of the federal government's regulatory regime that began under the New Deal heralded the advent of scholarship that would consider the dramatic changes taking place. Academic research on food and drug law was a key part of that transformation.

The field of FDA Law can trace the roots of its scholarship to the inaugural issue of the journal *Law and Contemporary Problems*, which featured several authors who advocated in favor of overhauling the Pure Food and Drug Act of 1906.<sup>23</sup> That issue, which appeared in December 1933, was edited by the journal's founder, Duke University Law School Professor David F. Cavers.<sup>24</sup> The journal's maiden issue was a symposium edition titled *The Protection of the Consumer of Food and Drugs*.<sup>25</sup>

At the time the issue was published, Cavers was serving as an advisor to the USDA as part of a panel seeking to reform the Pure Food and Drug Act.<sup>26</sup> By his own admission, Cavers had little or no experience in the field of food and drug regulation when he joined the group.<sup>27</sup> One of Cavers's contemporaries was Charles Wesley Dunn, who had drafted a competing version of the bill that ultimately became the FDCA.<sup>28</sup> But while Cavers largely abandoned food and drug law in favor of other scholarly fields after the 1930s,<sup>29</sup> Dunn's interest in food and drug law was anything but passing.

Unlike Cavers, Dunn was a longtime student of and expert on the nation's food and drug laws. In FDA historian Wallace Janssen's definitive biographical sketch of Dunn,<sup>30</sup> Janssen writes that Dunn first tried his hand at farming in Canada, where he was born, after graduating

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practical needs of our expanding industrial and commercial economy, as well as supplying the vast majority of our legislative and administrative officials.”).

23. See generally C.C. Regier, *The Struggle for Federal Food and Drug Legislation*, 1 LAW & CONTEMP. PROBS. 3 (1933).

24. See ROBERT F. DURDEN, *THE LAUNCHING OF DUKE UNIVERSITY: 1924–1949*, at 397 (1993).

25. *Id.*

26. See David F. Cavers, *The Food, Drug, and Cosmetic Act of 1938: Its Legislative History and Its Substantive Provisions*, 6 LAW & CONTEMP. PROBS. 2, 2 n.\* (1939).

27. *Id.* at 6 n.20.

28. See *id.* at 11 & n.36.

29. See *Appendix I: Principal Publications of David F. Cavers*, 41 LAW & CONTEMP. PROBS. 164 (1977) (citing, among dozens of other publications, only one article where the title specifically mentions FDA regulations). Later, at Harvard Law School, Professor Cavers did teach courses that focused in part on FDA regulations. See *infra* note 117.

30. See Wallace F. Janssen, *FDA's Unforgettable Character: Charles Wesley Dunn*, 37 FOOD DRUG COSM. L.J. 446 (1982).



from Princeton.<sup>31</sup> But family circumstances forced him to quit the farm,<sup>32</sup> and after moving to New York City and pursuing other interests, Dunn earned a law degree from New York University (NYU) in 1911.<sup>33</sup>

Food and drug law was a growing area of legal practice—if not of legal education or scholarship—in the years following the passage of the Pure Food and Drug Act of 1906.<sup>34</sup> Though fresh out of law school, Dunn recognized the law’s potential impact.<sup>35</sup> Dunn wrote several times to Harvey W. Wiley, the “founding father” of the FDA<sup>36</sup>—who at the time was still head of the agency’s predecessor, the Bureau of Chemistry (which was then located in the USDA)<sup>37</sup>—seeking advice on the potential publication of a manual cataloguing state and federal food and drug laws.<sup>38</sup> Wiley seemed amenable, so Dunn went to work and soon published *Dunn’s Pure Food and Drug Legal Manual*, the first “legal manual” on the Pure Food and Drug Act, in September 1912.<sup>39</sup>

Dunn’s \$10 manual, which boasted a whopping 4,649 pages, was a great success.<sup>40</sup> It helped him to secure large national clients, including both the Grocery Manufacturers of America and the American Pharmaceutical Manufacturers Association, while also serving other food and drug clients in the ensuing decades.<sup>41</sup>

Despite his personal success and that of America’s food industry, which by the mid-1940s was the largest industry in the country,<sup>42</sup> Dunn was keenly aware that the recently enacted FDCA had created a vast regulatory regime that the nation’s lawyers were ill prepared to

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31. *Id.* at 446.

32. *Id.* at 446, 448. After later professional success, Dunn bought a dairy farm in Vermont. *Id.* at 452. He was known to conduct business there. *Id.* While Janssen and others appear unclear why Dunn took up working in food law, we suspect Dunn’s longstanding interest in farming might have steered him at least in part in this direction.

33. *Id.* at 448.

34. *Id.*

35. *Id.* (“An alert young lawyer could see the possibilities.”).

36. *Id.* at 446.

37. See Swann, *supra* note 16 (describing the FDA’s origins within the USDA, its various name changes, and its eventual move to its present home within the Department of Health and Human Services).

38. Janssen, *supra* note 30, at 448.

39. *Id.* at 449.

40. Alan H. Kaplan & John A. Maher, *What Charles Wesley Dunn Did: His Life and the Law*, 50 FOOD & DRUG L.J. 1, 1 (1995).

41. See Charles Wesley Dunn, *Introduction*, 1 FOOD DRUG COSM. L.Q. 3, 3 (1946) [hereinafter Dunn, *Introduction*] (identifying himself as general counsel for both the Grocery Manufacturers of America and the American Pharmaceutical Manufacturers Association).

42. *Id.* at 5 n.6.

understand.<sup>43</sup> Much of the problem, as Dunn saw it, was that law schools did almost nothing to prepare students to become food lawyers.<sup>44</sup> Compounding the problem was the fact that there were few, if any, academics working at the nation's law schools who were capable of or interested in researching, writing about, and educating students on the FDCA.<sup>45</sup>

In 1945, seven years after the FDCA was adopted, Dunn joined with a handful of high-powered fellow New York attorneys in a modest effort to change the topography of food law. Dunn chartered and served as chairman of the New York State Bar Association's new section on Food, Drug and Cosmetic Law.<sup>46</sup> Among the section's primary purposes was "to provide [members] with a forum where they can basically study this law . . . ."<sup>47</sup> The section began with twenty-seven charter members.<sup>48</sup> It included committees on both food law and beverage law.<sup>49</sup> The group's inaugural meeting on January 24, 1945, was the first formal meeting ever convened by a group of lawyers to discuss the scope and implications of the FDCA.<sup>50</sup>

Of six resolutions adopted at its inaugural meeting, none addressed the need to educate those not already working in the field.<sup>51</sup> But two outcomes of the meeting ensured that the section's impact would be felt well outside of Albany, where the meeting took place.

The first was the section's creation of the *Food Drug Cosmetic Law Quarterly* (*Quarterly*), the first legal journal dedicated to scholarly discussion of the FDCA.<sup>52</sup> The primary goal of the *Quarterly* was "to create a better understanding of [the FDCA]."<sup>53</sup> The debut issue of the *Quarterly*, published in March 1946, consisted almost entirely of papers delivered by Dunn and others at the January 24 meeting.<sup>54</sup> Interest in the

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43. See generally *id.*

44. See *id.* at 3.

45. See *id.* at 6.

46. See *id.* at 3. The New York State Bar section on Food, Drug and Cosmetic Law still exists. See *Food, Drug and Cosmetic Law Section*, N.Y. ST. B. ASS'N, <https://www.nysba.org/FDC/> (last visited Dec. 18, 2013).

47. Dunn, *Introduction*, *supra* note 41, at 6.

48. *Id.* at 5.

49. *Id.* at 4, 6; see also *Wide Interest Noted in New Section of Bar*, AM. L. & LAW., May 7, 1946, at 1 [hereinafter *Wide Interest*].

50. Dunn, *Introduction*, *supra* note 41, at 5 n.5.

51. *Wide Interest*, *supra* note 49, at 1, 4.

52. Dunn, *Introduction*, *supra* note 41, at 3.

53. *Id.*

54. *Id.* at 5.

new *Quarterly* was so widespread that the first issue, consisting of 5,000 copies, “sold out in a few days.”<sup>55</sup>

The second factor was that Dunn had managed to create interest in the section and the *Quarterly* not just among two-dozen active industry lawyers and thousands of other attorneys, but also within the FDA itself. Among the authors whose work appeared in the inaugural issue of the *Quarterly* were three government officials.<sup>56</sup> Dunn also appended to his introduction a letter from the head of the FDA, Paul B. Dunbar, who expressed “surpris[e] that a formal organization like th[is] . . . was not formed long ago.”<sup>57</sup> Dunbar concluded that its formation was proof of the prominence of the issues the section was created to address.<sup>58</sup> In his introduction, Dunn noted that while the FDA and courts had given the FDCA “appropriate consideration,” the law had been mostly ignored by scholars and by those impacted by the law.<sup>59</sup> He envisioned the *Quarterly* as “a good beginning on a constructive study of the law before us.”<sup>60</sup>

While the focus in the inaugural issue was in part on the FDCA, a good number of the articles therein dealt not with the FDCA but instead with the 1906 Pure Food and Drug Act.<sup>61</sup> This is more than likely due to the fact that legal scholars had largely ignored that Act’s more than thirty years as law. Dunn’s legislative history of the Pure Food and Drug Act is just one example of how the *Quarterly* tried in earnest to document the history and evolution of what Dunn was fighting to shape into the field of FDA Law.<sup>62</sup>

In 1947, Dunn chaired the New York State Bar Association’s Food, Drug and Cosmetic Law section’s second annual meeting.<sup>63</sup> Despite its success—including its impressive corporate membership and

55. *Wide Interest*, *supra* note 49, at 1.

56. Dunn, *Introduction*, *supra* note 41, at 5 (“[A]uthors include two officials[] who have a high place in the administration of the Federal Food, Drug, and Cosmetic Act [and] a prominent member of the Food and Nutrition Board of the National Research Council.”).

57. *Id.* at 8.

58. *Id.* (calling it “concrete evidence of the recognition by lawyers of the importance that these laws have assumed in our national life”).

59. *Id.* at 3 (noting “there remains the need of its basic study . . . [that] has long been indicated”).

60. *Id.* at 5.

61. *See generally* 1 FOOD DRUG COSM. L.Q. (1946).

62. *See generally* Charles Wesley Dunn, *Its Legislative History*, 1 FOOD DRUG COSM. L.Q. 297 (1946).

63. *See* Charles Wesley Dunn, *Second Annual Meeting of Section on Food, Drug and Cosmetic Law of New York State Bar Association*, 2 FOOD DRUG COSM. L.Q. 107, 108 (1947).

backing<sup>64</sup>—the New York section was still the “only organization of the American bar in the field of food, drug, and cosmetic law.”<sup>65</sup>

But Dunn would soon change that. In 1948, Dunn helped spread the work of the New York State Bar section by launching and chairing a food and drug law committee under the American Bar Association’s (ABA) section on administrative law.<sup>66</sup> The committee, launched with approximately 120 charter members, held its first meeting in September 1948.<sup>67</sup>

Dunn used the ABA’s national pulpit to call for important changes in food and drug law. At the committee’s first meeting, he issued what may have been the first formal call for law schools to focus on the FDCA and for academics to develop and teach dedicated courses on the subject.<sup>68</sup> Dunn called the law “undoubtedly the commercial law of greatest social significance in the land” and noted that it “presents infinite important questions requiring constructive study.”<sup>69</sup>

Dunn, who by at least some accounts was the nation’s first food and drug law attorney,<sup>70</sup> had also become the best-known and most prominent food and drug law attorney in the country.<sup>71</sup> But Dunn was by no means alone in his efforts. H. Thomas Austern, who was instrumental in launching the *Quarterly*<sup>72</sup> and who became perhaps its most

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64. *Id.* 119–23 (listing among the group’s 146 members senior officials from some of the largest food and drug companies in the country, including officers from Merck, Nabisco, Borden, Nestle, Sunshine, and General Foods).

65. *Id.* at 107.

66. Charles Wesley Dunn, *The Food, Drug, and Cosmetic Law in the United States*, 3 FOOD DRUG COSM. L.Q. 308, 308 (1948) [hereinafter Dunn, *Food, Drug, and Cosmetic Law*].

67. *Id.*

68. *Id.* at 311 (“I recommend that the law schools provide for a special instruction and research on [the FDCA]; and that this [ABA] Committee promote such action, which does not exist.”).

69. *Id.* at 310.

70. See Janssen, *supra* note 30, at 455 (noting that Dunn “may well have been the first lawyer to specialize in th[e] field” of FDA Law). But note that federal government lawyers, such as those working at the USDA, have specialized in food law since before the formation of the FDA. See, e.g., McKay, *supra* note 6 (describing the accomplishments of dozens of USDA and FDA attorneys across nearly seven decades). The firm of Covington & Burling has also employed a variety of attorneys who have specialized in food law for almost 100 years. See, e.g., *Food & Beverage Law Practice*, COVINGTON & BURLING LLP, [http://www.cov.com/practice/food\\_and\\_drug/food\\_law/](http://www.cov.com/practice/food_and_drug/food_law/) (last visited Sept. 25, 2013) (“Covington draws on nearly a century of experience in food and beverage law.”).

71. Janssen, *supra* note 30, at 452 (“Mr. Dunn had made himself the most prominent attorney in his field in the United States, if not the world.”).

72. See, e.g., *The Editorial Advisory Committee*, 2 FOOD DRUG COSM. L.Q. 101, 101 (1947) (noting that Austern served on the editorial board of the *Quarterly* from its inception).

important<sup>73</sup> and celebrated<sup>74</sup> scholarly contributor, rivaled Dunn in stature.<sup>75</sup> Vincent Kleinfeld was similarly influential.<sup>76</sup>

With the New York State Bar section, the *Quarterly*, and the ABA committee in place, Dunn and his colleagues sought to further firm up the burgeoning field of FDA Law. In 1948, Dunn incorporated the Food Law Institute (FLI),<sup>77</sup> the precursor to today's Food and Drug Law Institute (FDLI).<sup>78</sup> The FLI's mission was to establish "the principal educational forum on the U.S. laws relating to foods, drugs, [and] cosmetics . . . ."<sup>79</sup>

FLI members, who included many of "the top executives of the food industry,"<sup>80</sup> supported the Institute financially.<sup>81</sup> The FDA also supported efforts to establish the FLI.<sup>82</sup> The agency was clearly interested in promoting legal scholarship in the area of FDA Law. Agency officials

73. Austern's regular FDA Law scholarship began in the late 1940s. *See, e.g.*, H. Thomas Austern, *The F-o-r-m-u-l-a-t-i-o-n of Mandatory Food Standards*, 2 FOOD DRUG COSM. L.Q. 532 (1947). And his regular scholarship in the field spanned into the 1980s. *See* H. Thomas Austern, *Food Regulation and the New Technology: The Evolving Governmental Process*, 35 FOOD DRUG COSM. L.J. 15 (1980).

74. *See, e.g.*, Robert B. McKay, *Sanctions in Motion: The Administrative Process*, 49 IOWA L. REV. 441, 451 n.29 (1964) ("The most knowledgeable, persistent and thoughtful critic of the FDA has been H. Thomas Austern."). Austern's lasting influence as a scholar is such that the FDLI holds an annual student writing competition in his honor. *See* *H. Thomas Austern Memorial Writing Competition*, FOOD & DRUG L. INST., <http://www.fdpi.org/resources/academics/h-thomas-austern-memorial-writing-competition> (last visited Sept. 25, 2013) (describing the inspiration behind the writing competition as being the "result of [Austern's] work on the drafting and negotiation surrounding the Federal Food, Drug, and Cosmetic Act, and his many scholarly contributions . . .").

75. Many accounts refer to Austern as "the dean of the food and drug bar." *See, e.g.*, *A Tribute to H. Thomas Austern*, 39 FOOD DRUG COSM. L.J. 121, 121 (1984); *H. Thomas Austern*, N.Y. TIMES, Apr. 19, 1984, <http://www.nytimes.com/1984/04/19/obituaries/h-thomas-austern.html>.

76. Kleinfeld's scholarship followed the same lengthy chronological arc as that of Austern. *See, e.g.*, Vincent A. Kleinfeld, *Legislative History of the Federal Food, Drug, and Cosmetic Act*, 1 FOOD DRUG COSM. L.Q. 532 (1946); Vincent A. Kleinfeld, *Reflections on the Food and Drug Administration and the Courts*, 37 FOOD DRUG COSM. L.J. 195 (1982) [hereinafter Kleinfeld, *Reflections*].

77. Janssen, *supra* note 30, at 452.

78. George M. Burditt, *The History of Food Law*, 50 FOOD & DRUG L.J. 197, 198 (1995) (noting today's Food and Drug Law Institute was founded as the Food Law Institute); *see also supra* note 6 and accompanying text.

79. Janssen, *supra* note 30, at 455.

80. Lawrence B. Kelly, *A New Nominee for the Undergraduate Curriculum*, 5 FOOD DRUG COSM. L.J. 313, 322 (1950).

81. Charles Wesley Dunn, *The Food Law Institute*, 4 FOOD DRUG COSM. L.Q. 471, 471 (1949) [hereinafter Dunn, *Food Law Institute*] (noting the Institute's "membership of food and related manufacturers, who finance it").

82. *Id.* at 473.

embraced the FLI<sup>83</sup> and “strongly approve[d] the [FLI]’s objective and . . . actively cooperat[ed] in its implementing program.”<sup>84</sup> FDA Commissioner Dunbar predicted that “legal research inspired by the Food Law Institute” would help spur further legislation.<sup>85</sup>

The FLI hosted an opulent dinner at New York’s Waldorf-Astoria hotel to celebrate its launch.<sup>86</sup> At the gala, Dunn stated that the problem he and the FLI sought to address was that “lawyers learn the food law only after law school graduation . . . .”<sup>87</sup> Dunn sought to upend that approach, noting that “[b]y providing the opportunity for systematic education of food and drug law specialists it would develop constructive leaders in the food (and drug) law . . . .”<sup>88</sup>

In particular, the FLI sought to foster graduate legal instruction pertaining to the FDCA.<sup>89</sup> Dunn began to raise Institute funds for the purpose of endowing a chair to lead the study of FDA Law at one of the nation’s top law schools.<sup>90</sup> He soon secured sufficient corporate donations and selected New York University School of Law, his *alma mater*, to house the chair and to establish a program for educating scholars in FDA Law.<sup>91</sup>

Dunn foresaw an LL.M. program focused on the FDCA as filling a tremendous gap. The need for FDA Law experts was strong and growing.<sup>92</sup> Yet, as of 1949, no law school class had ever focused chiefly on the FDCA, which was by then more than a decade old.<sup>93</sup> The only place for lawyers to learn FDA Law was still through on-the-job experience.<sup>94</sup> Yet experts in other fields understood the importance of teaching emerging leaders about the FDA’s evolution and impact. Colleges of pharmacy, for example, “ha[d] long instructed” their students on the FDCA.<sup>95</sup>

Exacerbating the problem, few FDA Law scholarly articles (outside of those published in the *Quarterly*) existed in the late 1940s.<sup>96</sup> At the

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83. Janssen, *supra* note 30, at 442–53.

84. Dunn, *Food Law Institute*, *supra* note 81, at 473.

85. Janssen, *supra* note 30, at 454.

86. *Id.* at 453.

87. *Id.* at 455.

88. *Id.* at 456 (internal citation omitted).

89. Dunn, *Food Law Institute*, *supra* note 81, at 472.

90. Janssen, *supra* note 30, at 452–54.

91. *Id.*

92. Dunn, *Food Law Institute*, *supra* note 81, at 473.

93. *Id.* at 472 (noting “it has only received incidental attention to a limited extent”).

94. *Id.* at 474.

95. *Id.* at 473.

96. *Id.* at 474.

New York ceremony announcing the creation of the FLI, Dunn outlined the specific needs of academics, practitioners, and students in the field, including the need for a reference bibliography, annotated FDCA compilations, authoritative studies, historical studies, and “a standard text book . . . for university teaching.”<sup>97</sup>

The FLI selected NYU to house its LL.M. program because New York City was a hub of food law, the school boasted “a notable postgraduate and research record,” and its law school enrollment (more than 600 at the time) was as large as that of all the other law schools in the nation combined.<sup>98</sup> Dunn and an assistant professor of law led the NYU program.<sup>99</sup> Dunn’s own 900-page FDA Law compendium (coauthored with Kleinfeld) was used as the course text.<sup>100</sup> Despite Dunn’s wish that NYU award graduating students an LL.M. degree in food law,<sup>101</sup> the school decided to award those who completed the program “an L.L.M. degree in Trade Regulation.”<sup>102</sup>

The initial LL.M. class consisted of six students, who were known as “Food Law Fellows.”<sup>103</sup> The students took two evening courses—one an advanced course on the FDCA, the other “a seminar on dominating food law problems and indicated related matters”—that were also open to the general student body.<sup>104</sup> These courses proved very popular with NYU law students.<sup>105</sup>

The nineteen guest lecturers featured in the initial NYU classes in 1949 included senior officials from the FDA, Federal Trade Commission, and Department of Justice, along with counsel from industry leaders like Quaker Foods, Pillsbury, and General Foods.<sup>106</sup>

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97. *Id.*

98. *Id.* at 475.

99. *Id.* at 476; Janssen, *supra* note 30, at 453.

100. VINCENT A. KLEINFELD & CHARLES WESLEY DUNN, FEDERAL FOOD, DRUG, AND COSMETIC ACT: JUDICIAL AND ADMINISTRATIVE RECORD 1938–1949 (n.d.); Charles Wesley Dunn, *The Food Law Institute, Inc.—First Annual Report*, 5 FOOD DRUG COSM. L.J. 340, 349 (1950) [hereinafter Dunn, *FLI First Annual Report*]. Kleinfeld was “one of the first lawyers in private practice to specialize in food and drug law.” *Firm & History*, KLEINFELD KAPLAN & BECKER, <http://www.kkblaw.com/firm-a-history.html> (last visited Mar. 27, 2014).

101. Dunn, *FLI First Annual Report*, *supra* note 100, at 349.

102. Kaplan & Maher, *supra* note 40, at 3.

103. *Id.*; see also Dunn, *FLI First Annual Report*, *supra* note 100, at 349; Burditt, *supra* note 78, at 198.

104. Dunn, *Food Law Institute*, *supra* note 81, at 476; see also Dunn, *FLI First Annual Report*, *supra* note 100, at 349.

105. Dunn, *Food Law Institute*, *supra* note 81, at 477 (noting the courses were the second-most-popular elective courses at the law school).

106. Dunn, *FLI First Annual Report*, *supra* note 100, at 350.

Principal lecturers in the program over the years included Austern,<sup>107</sup> Kleinfeld, and William Goodrich.<sup>108</sup>

We know some of the lecture topics discussed in the NYU classrooms thanks to the *Quarterly*, which sometimes repackaged and published the classroom remarks of the program's guest speakers. One such example is a lecture given to the NYU students in October 1949, by FDA canned foods branch chief Lowrie M. Beacham.<sup>109</sup> Beacham's 1949 *Quarterly* article,<sup>110</sup> which he delivered as a lecture to LL.M. students less than one month after the launch of the NYU program, provides a glimpse into the subject matter and scope of material presented during some of the earliest FDA Law classroom teaching.<sup>111</sup> It stands as a fascinating artifact of the teaching of FDA Law in the years prior to the arrival of the first casebook in the field.<sup>112</sup> Beacham's lecture reviewed

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107. Austern served as a faculty member in the NYU program into at least the 1960s. See, e.g., Austern, *Sanctions in Silhouette*, *supra* note 6, at 38 (referring to Austern as a current NYU faculty member).

108. Goodrich and Kleinfeld both served as regular instructors in the NYU program. See, e.g., Samuel A. McCain, *Some Landmarks along the Development of the Food Law and Its Administration since World War II*, 13 FOOD DRUG COSM. L.J. 109, 113 (1958) ("William Goodrich and Vincent Kleinfeld have regularly lectured at New York University since the inception of the program."). Kleinfeld also later taught in a related LL.M. program at George Washington University. See Kleinfeld, *Reflections*, *supra* note 76, at 195. Goodrich went on to become the FDA's chief counsel and, later, to author the first comprehensive FDA Law casebook. See Joseph E. Fortenberry, Book Review, 35 ALA. LAW. 330, 331 (1974) (reviewing THOMAS W. CHRISTOPHER & WILLIAM W. GOODRICH, *CASES & MATERIALS ON FOOD & DRUG LAW* (2d ed. 1973)); James R. Phelps, Book Review, 60 A.B.A. J. 1488, 1498 (1974) (reviewing CHRISTOPHER & GOODRICH, *supra*).

109. See generally L.M. Beacham, *Administrative Food Rulings under the Federal Food, Drug, and Cosmetic Act*, 4 FOOD DRUG COSM. L.Q. 512, 512, 521 (1949) [hereinafter Beacham, *Administrative Food Rulings*] (describing the "informal opinions" the FDA provided in response to "informal inquiries" made by those engaged "in the food trade" on issues like the "[w]eight of [s]yrups for [c]anned [f]ruit").

110. *Id.*

111. *Id.* at 513 n.\* ("Presented as a lecture in the New York University postgraduate course on the food law, October 25, 1949.").

112. Beacham focused his lecture on informal agency opinions on a variety of matters. *Id.* at 512. The decisions included a lengthy discussion of issues pertaining to the mandatory label statement of ingredients under § 403(i)(2) of the FDCA, failure to comply with a standard of identity, and labeling and packaging of semi-prepared foods. See generally *id.* In neither of the latter cases did Beacham refer to the FDCA by section number. See *id.* In fact, Beacham only referred to particular FDCA sections or language in five of the ten examples he cited. *Id.* In subsequent years, Beacham continued to enjoy a pulpit at the *Quarterly* to defend FDA actions and provide updates on agency enforcement of the FDCA. See, e.g., L.M. Beacham, *The Food Law Is Reasonable*, 6 FOOD DRUG COSM. L.J. 282, 282-83 (1951) [hereinafter Beacham, *The Food Law Is Reasonable*] (defending the FDCA while warning against "unreasonably narrow interpretation and unimaginative enforcement" of the Act); L.M. Beacham, *Recent Administrative Developments in the Field of Food*, 9 FOOD DRUG COSM. L.J. 197, 197



several administrative issues that had been addressed up to that point under the FDCA and attempted to justify how and why the FDA ruled as it did in those cases.<sup>113</sup> He stated his aim was to provide “some insight into the philosophy under which the [FDA] operates” to prove “that its actions are neither arbitrary nor capricious.”<sup>114</sup>

With the NYU program underway, the FLI also sought to spread FDA Law instruction to other schools, a plan that began with several FDCA-themed lectures at law schools across the country.<sup>115</sup> Those lectures led to the debut of FLI-supported FDA Law courses at Minnesota, USC, and Stanford.<sup>116</sup> Later, courses followed at Alabama, George Washington, and North Carolina.<sup>117</sup> FLI staff continued to lecture to students at various law schools, including California, Texas, Tulane,

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(1954) [hereinafter Beacham, *Recent Administrative Developments*] (“Outlining Present Food and Drug Administration Position[s] on Certain Products of General Interest”). And Beacham, like a substantial number of *Quarterly* authors throughout the journal’s history, did not use citations to support his arguments. *See, e.g.,* Beacham, *Administrative Food Rulings*, *supra* note 109; Beacham, *The Food Law Is Reasonable*, *supra*; Beacham, *Recent Administrative Developments*, *supra*.

113. *See* Beacham, *Administrative Food Rulings*, *supra* note 109, at 514.

114. *Id.* at 512.

115. Dunn, *FLI First Annual Report*, *supra* note 100, at 352.

116. *Id.* at 353 (noting the close proximity of those law schools to food-producing areas).

117. Charles Wesley Dunn, *The Profound Significance of Our Food and Drug Law*, 9 FOOD DRUG COSM. L.J. 321, 323 (1954) [hereinafter Dunn, *Profound Significance*]. Dunn also claims that Harvard featured an FDA Law course. *Id.* (“In addition the Harvard law school has developed . . . graduate . . . instruction in the food and drug law.”). *But see* Peter Barton Hutt, *Prologue*, in FOOD AND DRUG LAW: AN ELECTRONIC BOOK OF STUDENT PAPERS (2012) [hereinafter Hutt, *Prologue*], [http://www.law.harvard.edu/faculty/hutt/appendix\\_prologue.html](http://www.law.harvard.edu/faculty/hutt/appendix_prologue.html) (noting “food and drug law had never before been taught at Harvard Law School” prior to the debut of his winter 1994 course). Professor Hutt is correct that his was the first true FDA Law course ever to be taught at Harvard Law School. Professor Robert Braucher taught a Commercial Law Seminar at the law school during the fall 1952 semester, but that course—the first at Harvard ever to focus even in part on the FDA—centered not just on “food, drugs, [and] cosmetics” but also more broadly on textiles and perishable goods. *See* HARVARD LAW SCH., LAW SCHOOL OF HARVARD UNIVERSITY 1952-1953, at 45 (1969), *available at* <http://pds.lib.harvard.edu/pds/view/9045568?n=4623>. Professor Cavers taught a course at Harvard during the 1965–66 academic year, Product and Environmental Hazards, that focused in part on FDA-regulated products, including drugs and food additives. HARVARD LAW SCH., LAW SCHOOL OF HARVARD UNIVERSITY 1965-1966, at 72–73 (1969), *available at* <http://pds.lib.harvard.edu/pds/view/9045568?n=6693>. Cavers also taught a seminar at the law school during the fall 1966 semester, Legal Protection against Hazardous Products, that focused in part on products regulated by the FDA, including “dangerous and ineffective drugs [and] chemical food and color additives . . . .” HARVARD LAW SCH., LAW SCHOOL OF HARVARD UNIVERSITY 1966-1967, at 79 (1969), *available at* <http://pds.lib.harvard.edu/pds/view/9045568?n=6884>. None of these courses (save for Hutt’s) fit the general definition of “FDA Law” that we discuss in Part I, *supra*.

Vanderbilt, and Washington.<sup>118</sup> Graduates of the NYU program also taught FDA Law courses at a variety of law schools, including Emory, Miami, and NYU itself.<sup>119</sup>

In addition to the uptick in FDA Law courses, the FLI was also producing more regular publications. In March 1950, the *Food Drug Cosmetic Law Journal (Journal)* debuted as a monthly, replacing the *Quarterly*.<sup>120</sup> And while scholars lamented that there had been “few recent books” that touched on FDA Law, 1953 was to see publication of several FLI texts.<sup>121</sup>

Dunn passed away a few years later, in 1959.<sup>122</sup> He had envisioned the FLI’s many roles as united by an overarching educational responsibility.<sup>123</sup> In this he had succeeded. While Dunn is remembered most for his “development of a variety of educational programs,”<sup>124</sup> his most important legacy is as the founder and leading proponent of the field of FDA Law. But with Dunn’s death, the development of the field appears to have stagnated for some time without its great champion.

In the years after Dunn’s death, scholars continued to echo his lament from earlier decades about the lack of scholarly attention paid to FDA Law.<sup>125</sup> While the field of practice was by the mid-1970s a “newly blossomed and fast-growing specialty,”<sup>126</sup> critics continued to push for more law school classes dealing with FDA Law, citing the unmet need for law student education within the field.<sup>127</sup> But—echoing another of Dunn’s laments—most legal training still took place on the job.<sup>128</sup>

Scholarly research had also idled. One reviewer of an FDA Law casebook published in the early-1970s<sup>129</sup> used the occasion to blast

118. See Dunn, *Profound Significance*, *supra* note 117, at 323.

119. See *id.* at 324.

120. Kelly, *supra* note 80, at 321 n.27.

121. See John B. Buckley, Jr., *Food, Drug and Cosmetic Law*, 1952 ANN. SURV. AM. L. 270, 279.

122. See, e.g., Tribute, 14 FOOD DRUG COSM. L.J. 679 (1959) (mourning Dunn’s passing).

123. Kaplan & Maher, *supra* note 40, at 3 (“In structuring the Institute, Mr. Dunn contemplated that it would have several related roles — all dedicated to the concept of providing education in the field of food and drug law.”).

124. *Id.* at 1.

125. See, e.g., Phelps, *supra* note 108, at 1498 (“Few schools offer this subject the kind of treatment it deserves.”).

126. *Id.*

127. *Id.* (noting the great size of industries regulated by the FDA “well warrants an effort on the part of law schools to give young lawyers an introduction to food and drug law” but that “[t]he need is not being met”).

128. See *id.*

129. CHRISTOPHER & GOODRICH, *supra* note 108.

longstanding scholarly inertia in the field.<sup>130</sup> The critic noted the lack of publications available to academics and students in the field of FDA Law.<sup>131</sup> The only treatise available in 1974, printed in 1963, was outdated and “not very helpful.”<sup>132</sup> Worse, the only hornbook available at the time, published in 1955, could “only be of interest to historians.”<sup>133</sup>

Notably, the lack of scholarship in FDA Law was no longer a problem shared by other fields.<sup>134</sup> In fact, the gap between FDA Law and other fields of law appeared to be widening.<sup>135</sup> The growing chasm was all the more troubling because by the mid-1970s, the FDA had become a key federal agency.<sup>136</sup>

The *Journal* itself faced criticism in the 1970s for operating largely as a repurposer of vapid speeches by FDA officials and private practitioners alike.<sup>137</sup> This and other criticisms of the *Journal* are apt. It frequently published works by non-lawyers.<sup>138</sup> And some articles clearly did not rise to a level that might permit them to be considered scholarship of any sort.<sup>139</sup> Others that might have been considered scholarship completely lacked citations—a key hallmark of legal scholarship.<sup>140</sup> Despite these obvious flaws, the *Journal* was still seen as

130. Fortenberry, *supra* note 108, at 330 & n.3 (referring to FDA Law as “neglected” and “the underdeveloped territory of federal administrative law scholarship”).

131. *Id.* at 330.

132. *Id.* at 330 n.4.

133. *Id.* at 330 n.5.

134. *Id.* at 330 & n.3 (comparing publications in the field of FDA Law to those published in newer fields like Securities Law and Labor Law over the past dozen years and finding FDA Law trailing both respective fields by hundreds of publications). *See also* Cohen, *supra* note 22.

135. *See* Fortenberry, *supra* note 108, at 330 n.3 (showing data that demonstrate the dozen-year ratio between Securities Law publications and FDA Law publications was nearly 2 to 1, while the most recent seven-month data available at the time of publication in 1974 showed the ratio for the same publication categories had ballooned to more than 6 to 1).

136. *See* Phelps, *supra* note 108, at 1497 (“In the past decade the Food and Drug Administration has become one of the most important federal regulatory agencies.”).

137. *See* Fortenberry, *supra* note 108, at 330 (“While a law review devoted to food and drug law exists, its articles are too often merely printed speeches . . . pointing at with pride (or viewing with alarm) the latest development in the field.” (internal citation omitted)).

138. *See, e.g.*, Theodore P. Labuza, *Food Laws and Regulation: The Impact on Food Research*, 36 FOOD DRUG COSM. L.J. 293, 294 (1981) (describing the impact of the FDCA on food science).

139. *See, e.g.*, Ernest Dichter, *The Third Agers—The New Hedonists*, 27 FOOD DRUG COSM. L.J. 437, 438 (1972) (predicting that “Felafel,” “Humos,” and “pitta” were among foods that “might be very successful if available on the American market”).

140. *See, e.g.*, Beacham, *Recent Administrative Developments*, *supra* note 112; Richard Curtis Litman & Donald Saunders Litman, *Protection of the American*

important because it “print[ed] a number of valuable articles” and was, after all, the only journal paying any real attention to the field.<sup>141</sup>

Despite these critiques, there was also room for optimism. By the early 1970s, there was “a growing number of notable scholars in the field” of FDA Law.<sup>142</sup> And a 1973 casebook<sup>143</sup>—coauthored by Goodrich, who had recently served as head of the FDA’s general counsel’s office<sup>144</sup>—was seen as a “high quality”<sup>145</sup> and “coherent work”<sup>146</sup> that “explains the substantive law of food and drugs”<sup>147</sup> in a way that was “genuinely informative and useful”<sup>148</sup> and “of major importance.”<sup>149</sup> Additionally, in the 1970s, the FLI (by now the FDLI) established a fellowship program at the George Washington University (GWU) School of Law<sup>150</sup> that was similar to the NYU program. GWU fellows were candidates for an LL.M. degree in Patent and Trade Regulation Law.<sup>151</sup>

Goodrich’s successor as FDA general counsel, Peter Barton Hutt, had been a Food Law Fellow in the NYU program.<sup>152</sup> A veteran of private practice, Hutt returned to his law firm after his tenure with the

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*Consumer: The Congressional Battle for the Enactment of the First Federal Food and Drug Law in the United States*, 37 FOOD DRUG COSM. L.J. 310, 311 (1982) [hereinafter Litman & Litman, *The Congressional Battle*] (claiming without attribution, in an article devoid of citations, that “[t]he prevalent attitude of the nineteenth-century industrialist manufacturer was to restrict competition, keep profit margins high, and protect his pocketbook by cutthroat competition”); Richard Curtis Litman & Donald Saunders Litman, *Protection of the American Consumer: The Muckrakers and the Enactment of the First Federal Food and Drug Law in the United States*, 36 FOOD DRUG COSM. L.J. 647, 649 (1981) [hereinafter Litman & Litman, *The Muckrakers*] (making any number of unsubstantiated legal-historical assumptions—in an article of more than twenty pages—including that “[d]eep down, [Pres. Theodore] Roosevelt shared the reformers’ sympathy for the underprivileged”).

141. See Fortenberry, *supra* note 108, at 330 n.7 (“[N]o other law review contains more than a handful of useful articles on food and drugs.”).

142. *Id.* at 330.

143. See CHRISTOPHER & GOODRICH, *supra* note 108.

144. See Phelps, *supra* note 108, at 1498.

145. See Fortenberry, *supra* note 108, at 331.

146. *Id.* at 332.

147. *Id.* at 331.

148. *Id.* at 332.

149. *Id.* at 333. The same book critic, though, noted that the casebook sometimes borders on hagiography by “com[ing] close to being an apology for the current practices of the Food and Drug Administration.” *Id.* at 332.

150. See Litman & Litman, *The Muckrakers*, *supra* note 140, at 647.

151. See Litman & Litman, *The Congressional Battle*, *supra* note 140, at 310 n.\*.

152. Hutt, *Prologue*, *supra* note 117.

FDA ended in the mid-1970s.<sup>153</sup> When he had the opportunity in 1978 to serve as a guest lecturer in an FDA Law class at the University of Mississippi School of Law, Hutt found himself stumbling over the same obstacles that Dunn and others had before him.<sup>154</sup> As Hutt would later recall, in the late 1970s, FDA Law “continue[d] to be a backwater of legal scholarship [that was] taught only in a few law schools” around the country.<sup>155</sup> Whether the cause or effect of that backwater status, the only casebook available in the late 1970s, the Goodrich text that had last been revised in 1973, had already become “obsolete” and “unusable.”<sup>156</sup> Finding opportunity in the challenge, Hutt urged his friend and colleague, Richard A. Merrill of the University of Virginia School of Law, to collaborate with him to publish a “comprehensive current casebook.”<sup>157</sup>

The prevailing approach for teaching FDA Law always started with FDCA statutory definitions, moved on to FDA jurisdiction under the Commerce Clause and then looked at FDA enforcement authority.<sup>158</sup> But Hutt embraced Merrill’s new approach, which emphasized starting with “substantive issues—namely the regulation of food.”<sup>159</sup> The pair got to work on a textbook and soon had a wealth of usable content.<sup>160</sup> The materials Hutt and Merrill developed made their way into FDA Law courses the year before publication of their first casebook in 1980, thanks to photocopies distributed by the FDLI with the authors’ blessing.<sup>161</sup>

Hutt hoped publication of his casebook in 1980 would spur “[n]ew courses on food and drug law . . . in law schools throughout the country.”<sup>162</sup> His hope was soon realized.<sup>163</sup>

Though (with Merrill) he literally wrote the book on FDA Law, Hutt continued to work in private practice and never once taught the subject. Merrill taught it only rarely.<sup>164</sup> Despite this quirk, in 1987, Hutt

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153. Peter Barton Hutt, *Food and Drug Law: Journal of an Academic Adventure*, 46 J. LEGAL EDUC. 1, 1 (1996) [hereinafter Hutt, *FDA Law Adventure*].

154. Hutt, *Prologue*, *supra* note 117.

155. *Id.*

156. *Id.*

157. *Id.* See also Hutt, *FDA Law Adventure*, *supra* note 153, at 1–2 (describing the development of his casebook and Harvard course).

158. Hutt, *Prologue*, *supra* note 117.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

and Merrill agreed to update their casebook.<sup>165</sup> The revised second edition casebook debuted in 1991.<sup>166</sup>

Around this time, in the late 1980s and early 1990s, Harvard Law School was considering adding an FDA Law class to its course offerings.<sup>167</sup> After a protracted courtship, Hutt agreed to teach the course during Harvard's three-week winter term in 1994.<sup>168</sup>

The timing of Hutt's new Harvard course was fortuitous for the ongoing development of FDA Law, as the previous year had marked the end of the FDLI's NYU LL.M. program, a victim of waning demand.<sup>169</sup> The annual stipend for students in the program, which had grown from \$4,000 a year in 1949 to \$25,000 a year in 1993, "was no longer adequate" to convince students to take part in the program.<sup>170</sup> Also, by the mid-1990s, the FDLI had chosen to support academic pursuits through more limited means—including scholarships, sponsorship of paid writing competitions, and support for seventeen law schools that featured FDA Law courses.<sup>171</sup>

Hutt kept a detailed journal of the development and classroom teaching of his first FDA Law course at Harvard, which he later reproduced in a reflective piece in a scholarly journal of legal education.<sup>172</sup> Hutt's article (*née* journal) provides fascinating and important details about the development of FDA Law and stands as a much more significant artifact from the field even than Lowrie Beacham's published 1949 NYU classroom lecture.<sup>173</sup>

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165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Kaplan & Maher, *supra* note 40, at 3.

170. *Id.* at 3–4. NYU no longer offers any LL.M. degree in trade regulation, either. See *LL.M. and J.S.D. Prospective Students*, NYU LAW, <http://www.law.nyu.edu/llmjsd> (last visited Dec. 19, 2013).

171. Kaplan & Maher, *supra* note 40, at 4. It appears the FDLI has further scaled back its involvement in the nation's law schools in recent years. See *Academics*, FOOD & DRUG L. INST., <http://www.fdli.org/resources/academics> (last visited Dec. 10, 2013) (noting that "in the past, [FDLI] offered a number of academic programs including a grant program, fellows program and summer internship program" but now "sponsors the annual H. Thomas Austern Writing Awards Competition . . . [and] provid[es] desk copies of textbooks [and] academic pricing for books purchased for classes").

172. See generally Hutt, *FDA Law Adventure*, *supra* note 153. While Hutt's introduction, prologue, and other contributions to his *Electronic Book of Student Papers*, *infra* Part II.B, provide additional details to those he presents in his 1996 article, the article's discussion of his early classroom experience is far more detailed. Compare Hutt, *FDA Law Adventure*, *supra* note 153, with Hutt, *Prologue*, *supra* note 117.

173. See *supra* notes 109, 111–15 and accompanying text.

Hutt's article is incredibly valuable because it describes the development of everything from his syllabus and course goals to honing his teaching methods from class to class.<sup>174</sup> In this way, it serves as a snapshot of a modern FDA Law classroom.

Hutt describes that he planned to spend the first day of class on a lecture in which he “would outline the history of food and drug law and would discuss the structure of the” FDCA.<sup>175</sup> For the second day of class, Hutt writes he would deviate from the approach he and Merrill adopted (and emphasized in their casebook) and would instead focus on the traditional introduction to FDA Law, which covered agency jurisdiction and enforcement.<sup>176</sup> Class three would focus on “the definition and labeling of human food,” while the fourth class would deal with “regulation of the nutrition value of food.”<sup>177</sup> The final class pertaining to food, day five, would cover “food sanitation and safety.”<sup>178</sup> Following the three-day discussion of food, Hutt would spend the remaining two weeks of the three-week course focusing on other topics such as the regulation of drugs and human medical devices.<sup>179</sup>

The subject matter and focus Hutt describes are typical of an FDA Law classroom. But Hutt's classroom focus on issues (what he sometimes calls “concepts”) rather than on cases (“details”) appears to mark an important departure from traditional FDA Law teaching.<sup>180</sup> Hutt describes his teaching philosophy as “restricting the class to major issues which provoke substantial discussion . . . .”<sup>181</sup> Classroom discussions, though grounded in FDA regulations, would sometimes veer into interesting and non-traditional areas that ventured well outside the scope of the FDCA.<sup>182</sup>

Hutt's description of his FDA Law class is also peppered with mentions of FDA policy and the importance that students consider “major issues of public policy” in any discussion of FDA Law.<sup>183</sup> He writes that daily “student debates” in the classroom provided students with further opportunities to argue issues and “raise broad questions on which there could easily be two competing views, involving both

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174. See Hutt, *FDA Law Adventure*, *supra* note 153, at 1–2.

175. *Id.* at 5.

176. *Id.* at 5–6.

177. *Id.* at 6.

178. *Id.*

179. See *id.* at 9, 16.

180. *Id.* at 7.

181. *Id.* at 14.

182. *Id.* at 12 (“We concluded this part of the discussion by raising the possibility of a chain of fast-food restaurants selling ratburgers.”).

183. *Id.* at 7.

statutory and policy considerations.”<sup>184</sup> When forced to choose between law and policy, by his own account he would choose the latter.<sup>185</sup> And he stated bluntly that he wanted to “teach the law *and policy* relating to food and drugs.”<sup>186</sup>

For these reasons, Hutt’s course might best be categorized not as pure “FDA Law” but as something more akin to “FDA Law and Policy.”<sup>187</sup> Hutt seems to embrace this characterization.<sup>188</sup> In this way—and others<sup>189</sup>—Hutt’s scholarship and Harvard course might also be seen as an important and necessary link between pure FDA Law scholarship and FL&P.

Still, it would be a mistake to characterize Hutt’s course as either focused on food or as an FL&P course. After all, according to Hutt’s detailed description of his syllabus, only three of sixteen classes (18.75 percent) pertained to FDA food regulation.<sup>190</sup> The remainder focused on FDA regulation of drugs, medical devices, and other non-food areas.<sup>191</sup> Nevertheless, Hutt had begun to build a bridge to FL&P that he and others might cross.

### B. A Brief History of Agricultural Law

Agricultural Law (“Ag Law”) “is the study of the law’s effects upon the ability of the agricultural sector of the economy to produce and market food and fiber.”<sup>192</sup> It considers “the unique nature of agriculture and the law and regulations that have been developed by courts, state legislatures, and Congress to apply to it.”<sup>193</sup> The importance of the field stems from the essential nature of food, the economic importance of agriculture, and agriculture’s environmental impacts.<sup>194</sup>

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184. *Id.* at 5.

185. *Id.* at 8 (“I would focus on the more interesting, controversial, and debatable FDA policies, and not attempt to provide black letter law . . .”).

186. *Id.* (emphasis added).

187. *Cf. id.* at 20 (“The [course’s] balance between law and policy also seemed appropriate.”).

188. *Id.* at 19 (stating his objective “to teach FDA law and policy”).

189. *See generally* Hutt, *Food Law & Policy*, *supra* note 1.

190. *See generally* Hutt, *FDA Law Adventure*, *supra* note 153.

191. *Id.*

192. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 503.

193. Neil D. Hamilton, Book Review, 43 LA. L. REV. 1585, 1585 (1983) [hereinafter Hamilton, Book Review] (reviewing JULIAN JUERGENSMEYER & JAMES BRYCE WADLEY, *AGRICULTURAL LAW* (1982)).

194. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 504.



Ag Law “was first recognized as a unique area of law in the early 1900s.”<sup>195</sup> Early scholarly works first appeared in the field in the 1930s.<sup>196</sup> But the field was narrowly focused on “farm law,”<sup>197</sup> and this narrow, rural focus meant there was no “organized effort to focus on these issues within the legal profession.”<sup>198</sup>

Much of the early history of what would become the field of Ag Law mirrors many important elements of the early history of what would become FDA Law. Professor Harold W. Hannah, an early Ag Law scholar who may be “the true father of modern agricultural law studies,”<sup>199</sup> lamented in 1946, that Ag Law scholarship was sorely lacking.<sup>200</sup> This was the same year that Charles Wesley Dunn was similarly challenging his colleagues in business, government, and academia to help him cleave the nascent field of FDA Law.<sup>201</sup>

Thanks in large part to Hannah’s appeal, publications—including books and law review articles—soon appeared.<sup>202</sup> The University of Iowa’s Agricultural Law Center,<sup>203</sup> housed in the university’s School of Law, debuted in the mid-1950s.<sup>204</sup> As the FDA had with the FLI and its NYU LL.M. degree program,<sup>205</sup> the USDA helped launch the Iowa center.<sup>206</sup>

As with the NYU LL.M. program, the University of Iowa Law School’s Agricultural Law Center proved a training ground for future Ag Law scholars.<sup>207</sup> But the Iowa center also met the same fate as the NYU program—and much earlier—as various factors caused it to close by the

195. *Id.* at 509.

196. *Id.*

197. *See* Looney, *Educational Directions*, *supra* note 14 at 567; *accord* Mason Ladd, *Report of the Dean of the Iowa Law School to the Bar*, 40 IOWA L. REV. 1, 8–9 (1954) (noting the role of the University of Iowa Agricultural Law Center, *infra* notes 206–08 and accompanying text, was limited to preparing legal publications meant to help farmers “prevent unnecessary difficulties”). But Ag Law is much more than just “farm law.” *Cf.* Hamilton, *Book Review*, *supra* note 193, at 1593 (“[T]he body of agricultural law is not a small, distinct study, but instead is a section-based legal analysis that requires extensive exposition to be accurately and completely, and thereby usefully, presented.”).

198. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 513.

199. *Id.* at 509 & n.5, 510.

200. *Id.* at 510.

201. *See supra* Part I.A.

202. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 510.

203. *See* Ladd, *supra* note 197, at 7–8.

204. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 510.

205. *See supra* Part I.A.

206. *See* Ladd, *supra* note 197, at 7–8.

207. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 510.

early 1970s.<sup>208</sup> Ag Law courses launched at Harvard, Yale, and Texas in the 1940s fared even worse, dying off during the 1950s.<sup>209</sup>

But the stagnation appears to have been relatively short-lived. Ag Law's reviving fortunes as a field were noted by Professor Drew Kershen, who outlined several reasons for the field's renewed importance at a 1976 *South Dakota Law Review* symposium on Ag Law.<sup>210</sup> Indeed, Kershen was correct. The modern field of Ag Law began to coalesce in the late 1970s and early 1980s,<sup>211</sup> due in large part to a nationwide farm credit crisis.<sup>212</sup>

What features had helped cement Ag Law's place in "the intellectual firmament"?<sup>213</sup> In an important 1990 article on the maturation of Ag Law, Drake University School of Law Professor Neil D. Hamilton cited two necessary factors required to establish the status of any recognized field of law: (1) publications and (2) law school courses.<sup>214</sup> Hamilton argues that a field of law may not be considered as such unless it has first been defined in the scholarly literature.<sup>215</sup> Similarly, he writes that a field has not matured "until it is recognized by the legal education community as an important part of the education and training of law students."<sup>216</sup>

In the 1980s, practitioners, academics, and others in and around the field began to recognize Ag Law as "a distinct" and "significant" area of the law<sup>217</sup> and "a legitimate field of academic study."<sup>218</sup> Evidence of Ag

208. *Id.* at 511.

209. *See* Schneider, *Reconsideration of Agricultural Law*, *supra* note 14, at 941.

210. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 511.

211. *See* Hamilton, Book Review, *supra* note 193, at 1585 (heralding "a new breed of law . . . on the legal problems associated with the production, marketing, and use of agricultural products").

212. *See, e.g.*, Susan A. Schneider, *Thoughts on Agricultural Law and the Role of the American Agricultural Law Association*, 10 *DRAKE J. AGRIC. L.* 1, 1–2 (2005) [hereinafter Schneider, *Thoughts on Agricultural Law*] (noting how "an extensive farm financial crisis was causing heartache on family farms" in the early 1980s).

213. James W. Looney, *Agricultural Law and Policy: A Time for Advocates*, 30 *S.D. L. REV.* 193, 194–95 (1984) [hereinafter Looney, *Ag Law and Policy Advocates*] (citation omitted); accord Neil E. Harl, *Agricultural Law: A Place in the Intellectual Firmament*, 3 *AGRIC. L.J.* 537, 537 (1982) [hereinafter Harl, *Agricultural Law*]. Professor Harl's Ag Law scholarship stretches from the 1950s into the present century. *See* Neil E. Harl, *Publications*, IOWA ST. UNIV. DEP'T ECON., <http://www.econ.iastate.edu/~harl/Publications.pdf> (last visited Mar. 29, 2014).

214. *See* Hamilton, *Study of Agricultural Law*, *supra* note 10, at 512–18. Hamilton also cites the importance of professional associations but does not ascribe the same essentiality to those as he does to the former two categories. *See id.*

215. *Id.* at 513.

216. *Id.* at 516.

217. *Id.* at 513.

218. Looney, *Educational Directions*, *supra* note 14, at 568.

Law's growth as a field included a rising number of law school courses, the creation of a national Ag Law association,<sup>219</sup> numerous symposia, and an array of scholarly publications in the field—including “articles, casebooks, and treatises that identify, present, analyze, and dissect the law as it relates to agriculture.”<sup>220</sup>

An increase in Ag Law scholarship, Hamilton's first criteria, was particularly important for establishing and defining the field.<sup>221</sup> Data show the tremendous growth in Ag Law scholarship over a period of just a few years.<sup>222</sup> At least seven law journals published symposium issues on Ag Law topics between 1974 and 1979, when the first dedicated Ag Law journal debuted.<sup>223</sup> At least seven law reviews also published Ag Law symposium issues in the 1980s—some more than once.<sup>224</sup> Several Ag Law treatises also appeared in the 1980s.<sup>225</sup> By 1982, Ag Law had also seen the publication of three competing scholarly texts within just three years.<sup>226</sup> The first Ag Law casebook was published in 1985.<sup>227</sup> By 1990, Ag Law publications included a host of “treatises, journals, case reporters, and other analytical materials . . . that did not exist ten years ago.”<sup>228</sup> These data on academic scholarship show dramatic evidence of “the tremendous growth of the discipline as a whole” during the 1980s.<sup>229</sup>

Course offerings, Hamilton's second criteria, were also expanding. In 1979, just nine law schools offered Ag Law courses.<sup>230</sup> Less than ten years later, a 1986 survey found that twenty-five law schools offered or planned to offer Ag Law courses.<sup>231</sup>

The University of Arkansas School of Law launched an LL.M. program in Agricultural Law in 1980.<sup>232</sup> The program, founded by Professor (later Dean) James W. Looney, offered a wealth of Ag Law

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219. See *About the AALA*, AM. AGRIC. L. ASS'N, <http://aglaw-assn.org/about/> (last visited Dec. 18, 2013).

220. Hamilton, Book Review, *supra* note 193, at 1585.

221. *Id.*

222. See *id.* at 569 (using publication data to show the annual rate of legal publications in the field of Ag Law had nearly doubled between 1979 and 1986).

223. *Id.* at 514.

224. See *id.* at 514 n.18.

225. *Id.* at 515. See also NEIL E. HARL, AGRICULTURAL LAW (1980); Harl, *Agricultural Law*, *supra* note 213.

226. See Hamilton, Book Review, *supra* note 193, at 1585–86.

227. See KEITH G. MEYER ET AL., AGRICULTURAL LAW: CASES AND MATERIALS (1985). The text acknowledged the importance of agricultural policy. See *id.* at xxi (referring to “the policy setting out of which this area of the law has emerged”).

228. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 512.

229. Looney, *Educational Directions*, *supra* note 14, at 569.

230. *Id.* at 516 n.22.

231. *Id.* at 518.

232. Looney, *Educational Directions*, *supra* note 14, at 568.

courses in topics like farm cooperatives, agricultural finance and credit, farm estate planning, and government regulation of agriculture.<sup>233</sup> That same year, the American Agricultural Law Association (AALA) was established and held its first meeting.<sup>234</sup>

The Agricultural Law Center at Drake University Law School launched in fall 1983.<sup>235</sup> The primary purpose of the Center, founded by Hamilton, was to enhance educational opportunities for Drake law students.<sup>236</sup> Like the Iowa Law School's defunct Agricultural Law Center, the Drake Center's primary activity was "to assist practitioners involved with agricultural law" in Iowa.<sup>237</sup>

In conjunction with the Center, Drake Law School firmed up the school's commitment to Ag Law.<sup>238</sup> Drake added courses in Ag Law problems, agricultural cooperatives, and government regulation, and another in selected topics in the field.<sup>239</sup> Its Summer Ag Law Institute offered additional coursework—including a class on the Farm Bill.<sup>240</sup> The *Drake Law Review* held an annual Ag Law symposium.<sup>241</sup> Students launched an Ag Law group and contributed to the *Iowa Agricultural Law Reporter*.<sup>242</sup>

A growing number of law schools began to feature Ag Law courses during this period.<sup>243</sup> These classes focused on "a subset of legal rules, statutes, and case doctrine applicable to only . . . the agriculture industry."<sup>244</sup>

With Ag Law firmly established, the field also began to move in a new direction. In the 1980s, Ag Law scholars noted that the purpose of U.S. agricultural policy had become "less clear" than in years past.<sup>245</sup> Looney thought that Ag Law scholars should not merely serve as observers of the trend. "If we recognize that agriculture is changing and

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233. *See id.*

234. *See Schneider, Thoughts on Agricultural Law, supra* note 212, at 4 (noting that the AALA was established in December 1980 by a group of forty-five academics, practitioners, students, and others whose work pertained to Ag Law).

235. Neil D. Hamilton, *A Blueprint for Successfully Developing Agricultural Law Studies: The Drake University Agricultural Law Center after Three Years*, 38 ALA. L. REV. 547, 547 (1987).

236. *Id.*

237. *Id.* at 548.

238. *Id.*

239. *Id.*

240. *Id.* at 549.

241. *Id.* at 548.

242. *Id.*

243. Looney, *Educational Directions, supra* note 14, at 567.

244. *Id.*

245. *See Looney, Ag Law and Policy Advocates, supra* note 213, at 193.

that this change calls for a re-evaluation of agricultural policy,” asked Looney in 1984, “then what role should those with an interest in agricultural law play in the process?”<sup>246</sup> Looney called on Ag Law professionals to take an active role in pushing for policy changes.<sup>247</sup> Legal scholars slowly embraced the idea,<sup>248</sup> though by 1987, Looney had already noted that the study of Ag Law had matured into the study of “Agricultural Law and Policy” (Ag Law & Policy).<sup>249</sup>

While Ag Law & Policy inches the field of Ag Law closer to FL&P in the same way that Hutt moved FDA Law in the same direction with his “FDA Law and Policy” approach, Ag Law as a whole—just like FDA Law—is neither “food law” nor FL&P.<sup>250</sup> Still, prominent Ag Law scholars who embrace the field’s focus on policy have urged the field to adopt a central focus on food moving forward.<sup>251</sup>

## II. THE BIRTH OF FOOD LAW & POLICY

### A. *The Field’s Distinguishing Characteristics*

“Food Law” refers to the complete set of local, state, and federal laws and regulations that implement food policies. “Food Law & Policy”—FL&P—is the study of the basis and impact of those laws and regulations that govern the food and beverages we grow, raise, produce, transport, buy, sell, distribute, share, cook, eat, and drink.<sup>252</sup> It describes

246. *Id.* at 195.

247. *Id.* at 196 (“My plea is for us, as professionals interested in law and in agriculture, to . . . become agricultural advocates; a force for change in the public policies (and the law embodying those policies) affecting agriculture.”).

248. *See, e.g.*, Patrick Madden & Paul B. Thompson, *Ethical Perspectives on Changing Agricultural Technology in the United States*, 3 NOTRE DAME J.L. ETHICS & PUB. POL’Y 85, 116 (1987) (discussing the debate over “philosophies [that] guide agricultural law and policy”). Notably, as early as 1948, James Durham had urged law schools to add courses focused on Ag Law and Policy. *See* James A. Durham, *A Suggested Course in Agricultural Law*, 34 IOWA L. REV. 286 (1949) (calling for schools “to offer courses on Agricultural Policy and Law”).

249. Looney, *Educational Directions*, *supra* note 14, at 568.

250. *See, e.g.*, Hamilton, Book Review, *supra* note 193 (using the word “food” just once in a nearly ten-page review of a new Ag Law textbook).

251. *See, e.g.*, Schneider, *Reconsideration of Agricultural Law*, *supra* note 14, at 946 (“One word sets the stage for the future of agricultural law as a mature legal discipline—food.”).

252. Scholars sometimes use the term “food system” to describe the study of the relationships between each of the nodes in the food chain that we identify here. *See, e.g.*, Kameshwari Pothukuchi & Jerome L. Kaufman, *The Food System: A Stranger to the Planning Field*, 66 J. AM. PLAN. ASS’N 113, 113 (2000) (explaining that the food system includes “production, processing, distribution, consumption, and waste management”); Tai, *supra* note 9.

the “rules to govern common behavior and shared experiences regarding the available food supply.”<sup>253</sup> FL&P focuses on innumerable issues to illustrate the relationship between the laws and policies that structure the food system and their intended and unintended consequences on health, the environment, the economy, and many other areas. As we detail below, this field is unique for several reasons. FL&P breaks out of the traditional boundaries of FDA Law and Ag Law. It encompasses the study of relevant food laws and regulations at all levels of government—federal, state, and local—and adopts a policy focus that is uncommon in other legal fields.

The breadth and depth of the food focus of FL&P stands in sharp contrast to the respective foci of FDA Law and Ag Law. For example, in addition to its discussion of the production of food, Ag Law also includes the study of “the natural fibers we wear, and increasingly, the bio-fuels that run our vehicles.”<sup>254</sup> It focuses solely on laws “that apply to the production, marketing, and sale of agricultural products . . . .”<sup>255</sup> FDA Law, meanwhile, focuses on food issues only insofar as they pertain to the FDCA and its progeny. It also contemplates a broad set of topics unrelated to food.<sup>256</sup> This is necessarily the case because FDCA regulations pertain to many areas not linked to food, such as

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253. Hutt, *Food Law and Policy*, *supra* note 1.

254. See Schneider, *Reconsideration of Agricultural Law*, *supra* note 14, at 935 (2010) (internal quotation omitted). The FDLI recently recognized the importance of FDA Law and Policy. See *FDLI's Food and Drug Policy Forum*, FOOD & DRUG L. INST., <http://www.fdi.org/resources/resources-list-view/food/policy-forums> (last visited Dec. 19, 2013). An FDLI eNewsletter that debuted in 2010 “is designed to provide a new electronic marketplace for the exchange of ideas among food and drug law, regulation, and policy professionals.” Press Release, Food & Drug Law Inst., Food and Drug Law Institute Launches New Policy Publication (Dec. 7, 2010), available at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aFcuZCL8oqKE>. Notably, eNewsletter topics have included issues that fall outside of the FDCA. See, e.g., Press Release, Food & Drug Law Inst., The Food and Drug Law Institute's *Food and Drug Policy Forum* Discusses “Pink Slime” Issue (May 9, 2012), available at <http://www.fdi.org/docs/default-document-library/050912.pdf?sfvrsn=0>.

255. See Schneider, *Reconsideration of Agricultural Law*, *supra* note 14, at 935.

256. Lars Noah, *One Decade of Food and Drug Law Scholarship: A Selected Bibliography*, 55 FOOD & DRUG L.J. 641, 641 (2000). Prior to the 1990s, discussions of “food law”—when they did occur—looked almost uniquely abroad; many of the approximately five-dozen “food law” articles published in the 1970s, for example, focused in whole or in part on international food law. See, e.g., Julio E. Alfaro & Julius G. Zimmerman, *The Food Law of Argentina*, 31 FOOD DRUG COSM. L.J. 545 (1976); Bengt Augustinsson, *Sweden's New Food Law*, 25 FOOD DRUG COSM. L.J. 382 (1970); *Harmonization of Food Legislation in Latin America*, 25 FOOD DRUG L.J. 307 (1970); Paul M. Karl, *Food Laws and Their Influence on International Trade*, 25 FOOD DRUG COSM. L.J. 453 (1970); Julius G. Zimmerman, *Food Law—International*, 31 FOOD DRUG COSM. L.J. 218 (1976).

pharmaceuticals, medical products, medical devices, and nutritional supplements.<sup>257</sup>

Reviewing the contents of three recent texts helps to further distinguish FL&P from FDA Law and Ag Law. A 2011 Ag Law text, *Food, Farming, and Sustainability: Readings in Agricultural Law*, focuses primarily on agricultural laws.<sup>258</sup> Approximately one-eighth (13 percent) of the content of the text is devoted to discussion of food and its relation to agriculture.<sup>259</sup> Similarly, about one-fourth (23 percent) of the content of the leading FDA Law casebook, *Food and Drug Law*, is devoted to the FDA's regulation of food.<sup>260</sup> And another FDA Law text, *Food and Drug Law and Regulation*, devotes four of twenty-seven chapters to food.<sup>261</sup>

FL&P is also not bound by any particular law, policy, or discipline. In fact, FL&P is often necessarily multidisciplinary and interdisciplinary. Within the field of law, FL&P touches on issues from many distinct spheres, including not just FDA Law and Ag Law but also environmental law, health law, and constitutional law. It is also interdisciplinary, as it frequently requires collaboration between lawyers or legal scholars and those with training or expertise in different disciplines like medicine, public health, and the social sciences. Indeed, the study of food policies arose concurrently in several disciplines outside of law, with scholars and practitioners in fields such as food studies,<sup>262</sup> urban planning,<sup>263</sup>

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257. A survey of FDA Law scholarship published in the 1990s in law reviews and journals other than the FDLI's *Food and Drug Law Journal* (as the *Food Drug Cosmetic Law Journal* is now known) shows that "food law" topics comprise about 10 percent of the FDA Law articles published that decade. See generally Noah, *supra* note 256. The remaining 90 percent of FDA Law scholarship in the 1990s pertained to pharmaceuticals, medical products, medical devices, biologics, investigational products, nutritional supplements, and other products and fields covered by the FDCA. See *id.*

258. See generally SUSAN A. SCHNEIDER, *FOOD, FARMING AND SUSTAINABILITY* (2010).

259. See *id.*

260. PETER BARTON HUTT, RICHARD A. MERRILL & LEWIS A. GROSSMAN, *FOOD AND DRUG LAW* (3d ed. 2007).

261. See generally DAVID G. ADAMS, RICHARD M. COOPER, MARTIN J. HAHN & JONATHAN S. KAHAN, *FOOD AND DRUG LAW AND REGULATION* (2d ed. 2011).

262. The Department of Nutrition, Food Studies, and Public Health at NYU's Steinhardt School developed a Food Systems concentration in 2007. NYU STEINHARDT, MASTER OF ARTS (M.A.) DEGREE IN FOOD STUDIES (FOOD CULTURE AND FOOD SYSTEMS) (CURRICULUM FOOD-CUL OR FOOD-SYS): 2007-2008 (2007), available at [http://steinhardt.nyu.edu/nutrition.olde/PDFS/FOOD\\_CUL\\_&\\_SYS\\_2007-08.pdf](http://steinhardt.nyu.edu/nutrition.olde/PDFS/FOOD_CUL_&_SYS_2007-08.pdf). Department of Nutrition, Food Studies, and Public Health, NYU STEINHARDT SCH. CULTURE, EDUC. & HUM. DEV., <http://steinhardt.nyu.edu/nutrition/food/ma/> (last visited Oct. 13, 2013).

public health, and psychology<sup>264</sup> responding to new challenges facing the food system. In short, FL&P courses and scholarship are unbounded by discipline. They are limited only by the requirement that their subject matter involve some issue(s) related to government action (or inaction) pertaining to food.<sup>265</sup>

FL&P is also unique in that it focuses on issues pertaining to laws and regulations created at all levels of government—local, state, and federal—and involving every element of the food system. Examples of local government actions that constitute FL&P topics include municipal bans on the use of trans fat in foods,<sup>266</sup> mandatory calorie labeling,<sup>267</sup> composting regulations,<sup>268</sup> and rules designed to facilitate urban farms.<sup>269</sup> Examples of state FL&P topics include bans of food items such as *foie gras*,<sup>270</sup> the creation of state food system plans or statewide “farm bills,”<sup>271</sup> and various state cottage food laws.<sup>272</sup> At the federal level, as alluded to throughout this Article, FL&P includes a full discussion of the federal laws and policies that impact the food that we eat, including not only the FDA and its authority, but also the work of the USDA and its agricultural and nutrition programs, the Environmental Protection Agency and federal environmental regulations impacting agriculture, the federal Farm Bill and farm subsidies, federal regulations pertaining to genetically modified foods, and even international trade protocols governing food.

Consequently, FL&P courses and scholarship may be the only space in which a law student may study both a municipal ordinance barring

263. The American Planning Association instituted a food systems interest group in 2005. *Food Systems*, AM. PLAN. ASS’N, <http://www.planning.org/nationalcenters/health/food.htm> (last visited Oct. 13, 2013).

264. The Yale Rudd Center for Food Policy and Obesity was launched in 2005 with faculty from the field of Social Psychology. *History*, YALE RUDD CENTER FOR FOOD POL’Y & OBESITY, [http://www.yaleruddcenter.org/who\\_we\\_are.aspx?id=12](http://www.yaleruddcenter.org/who_we_are.aspx?id=12) (last visited Oct. 13, 2013).

265. Hence, the field is neither the place to learn about FDA enforcement of the agency’s cosmetics regulations nor to learn about a farmer’s access to credit.

266. N.Y.C., N.Y., HEALTH CODE § 81.08 (effective 2007).

267. MONTGOMERY COUNTY, MD., CODE §15-15A (effective 2010).

268. *Mandatory Recycling and Composting Ordinance*, SF ENV’T, <http://www.sfenvironment.org/article/recycling-and-composting/mandatory-recycling-and-composting-ordinance> (last visited Dec. 31, 2013).

269. S.F., CAL., ADMINISTRATIVE CODE §§ 53.1–53.4 (2012); *Urban Agriculture Rezoning Initiative*, BOS. REDEVELOPMENT AUTHORITY, <http://www.bostonredevelopmentauthority.org/planning/planning-initiatives/urban-agriculture-rezoning> (providing link to BOS., MASS., ZONING CODE § 89.1 (2013)) (last visited Mar. 29, 2014).

270. CAL. HEALTH & SAFETY CODE ch. 13.4 § 25980 (2012).

271. Ill. Food, Farms and Jobs Act, Pub. Act 095-0145 (2007).

272. See, e.g., CAL. GOV’T CODE 6.1, § 51035 (2012).



mobile food trucks from a city neighborhood and the health and environmental impacts of federal farm subsidies. Courses can span the entire food system, from production through consumption,<sup>273</sup> or can focus on particular areas, such as food and agricultural law and policy,<sup>274</sup> farm animal law and policy,<sup>275</sup> food and sustainability,<sup>276</sup> or even areas as specific as wine law.<sup>277</sup>

These and other issues that are at the heart of FL&P are not new, even if their study is. Dunn, the father of FDA Law, singled out sixty-five years ago what he referred to as “special state food laws” that pervaded outside the FDCA.<sup>278</sup> Dunn’s so-called *special* laws included countless regulations pertaining to “production,” “retail,” “handling, storage, and marketing,” and “sale” of food.<sup>279</sup> Much more recently, Hutt echoed Dunn, writing that it is a common mistake to “assume that food law is limited to the governmental laws and regulations governing the marketing of food within a particular jurisdiction. . . . A true understanding of food law and policy . . . extends far beyond these narrow confines.”<sup>280</sup> These issues identified by Dunn and Hutt, the

273. See, e.g., *940 L&CP: Food Law - §009, Spring 2013*, U. WIS. L. SCH., <http://law.wisc.edu/courseInfo/courseDescription.php?iCatNBR=940&iSection=009&iTerm=1134&iSc=A1> (last visited Dec. 31, 2013); *Food Law and Policy*, HARV. L. SCH., <http://www.law.harvard.edu/academics/curriculum/catalog/index.html?o=65892> (last visited Dec. 31, 2013); *Law 364 - Food Law and Policy*, UCLA SCH. L. CURRICULUM GUIDE, <https://curriculum.law.ucla.edu/Guide/InstructorCourse/246?i=154> (last visited Dec. 31, 2013).

274. *Agricultural/Food Law and Policy*, UNC SCH. L., <http://www.law.unc.edu/academics/courses/foodlaw/> (last visited Dec. 31, 2013); *Food & Agricultural Law Policy*, DUKE L. CURRICULUM, <http://web.law.duke.edu/curriculum/courseinfo/course?id=475&all=1> (last visited Dec. 31, 2013).

275. *Course Descriptions*, U. NEB. C. L., <http://law.unl.edu/academics/coursedescript.html#f> (last visited Dec. 31, 2013) (noting Animals and Agricultural Production – Law and Policy); *Farmed Animal Law & Policy Seminar*, NYU L., <http://its.law.nyu.edu/courses/description.cfm?id=10461> (last visited Dec. 31, 2013); *Law 556 - Animals in Agriculture*, UCLA SCH. L. CURRICULUM GUIDE, <https://curriculum.law.ucla.edu/Guide/Course/286> (last visited Dec. 31, 2013).

276. *Course Catalog: Environmental Law Seminar: Food, Farming, and Sustainability*, U. MD. FRANCIS KING CAREY SCH. L., [http://www.law.umaryland.edu/academics/program/curriculum/catalog/course\\_details.html?coursenum=332](http://www.law.umaryland.edu/academics/program/curriculum/catalog/course_details.html?coursenum=332) (last visited Dec. 31, 2013); *Law Course Catalog: Sustainable Food and Agriculture Seminar*, LEWIS & CLARK L. SCH., [https://law.lclark.edu/courses/catalog/law\\_504.php](https://law.lclark.edu/courses/catalog/law_504.php) (last visited Dec. 31, 2013).

277. *278.8 sec. 1 - Wine Law (Fall 2013)*, BERKELEY L., <http://www.law.berkeley.edu/php-programs/courses/coursePage.php?cID=10697&termCode=D&termYear=2013> (last visited Dec. 31, 2013).

278. See Dunn, *Food, Drug, and Cosmetic Law*, *supra* note 66, 328.

279. *Id.*

280. Hutt, *Food Law & Policy*, *supra* note 1, at 2–3 (listing a host of issues implicated by USDA law and policy—including obesity, food aid, and farm subsidies).

respective founders of FDA Law and FDA Law and Policy, are ones that form the basis of the field of FL&P.

Further, the policy focus of FL&P sets it apart from its FDA Law and Ag Law progenitors. Historically, policy analysis and discussion were generally lacking in law school classrooms—regardless of the topic.<sup>281</sup> Discussions of “food policy” are also largely absent from scholarly work before 2000. Prior “food policy” articles dealt with food policies adopted in the context of foreign wars—from Alfred Maylander’s *Food Situation in Germany during the Summer of 1918*<sup>282</sup> to T.F. Macrae’s analysis of post-war food production in Great Britain, *The Effect of Britain’s Food*.<sup>283</sup> There are a few notable exceptions from the 1900s in which scholars considered food policies in Ag Law and FDA Law.<sup>284</sup> More recently, probably thanks to the influence of Hutt and Looney on their respective fields, policy discussions have become somewhat more common.<sup>285</sup> But policy is still not a central component of either FDA Law or Ag Law, making FL&P unique because of the essential role policy considerations play in the field.

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281. See, e.g., Peter H. Schuck, *Lawyers and Policymakers in Government*, 61 LAW & CONTEMP. PROBS. 7, 17 (1998) (“Law school curricula vary from institution to institution, but I venture that few law schools offer courses in policy analysis and related topics—although some policy-oriented public law courses . . . may touch on such topics.”).

282. See generally Alfred Maylander, *Food Situation in Germany during the Summer of 1918*, 7 MONTHLY LAB. REV. 5, 5–6 (1918) (reporting that “prospects of the German food supply [had] darkened with remarkable rapidity” that year due to “serious consequences of the food policy pursued in the spring”).

283. See generally T.F. Macrae, *The Effect of Britain’s Food*, 7 FOOD DRUG COSM. L.J. 430, 430–33 (1952) (discussing a British “policy adopted concerning bread” and various other post-war food policies).

284. See H. Templeton Brown, *The First 50 Years under the Meat Inspection Act of 1906*, 11 FOOD DRUG COSM. L.J. 127, 130 (1956) (“devot[ing] considerable time to a discussion of the conditions which existed prior to passage of the [Act], and the underlying forces which brought it into being,” including its “broad over-all purposes”); William W. Goodrich, *The Rational Use of Chemicals in Food*, 12 FOOD DRUG COSM. L.J. 535 (1957); Peter Barton Hutt, *Public Policy Issues in Regulating Carcinogens in Food*, 33 FOOD DRUG COSM. L.J. 541, 549 (1978) (“[A]lthough the food safety policy embodied in the current law, and the FDA’s implementation of it, may have made good regulatory sense even as late as a few years ago, it is obviously no longer sustainable.”).

285. See, e.g., Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 DRAKE J. AGRIC. L. 9 (2010); Jim Chen, *Food and Superfood: Organic Labeling and the Triumph of Gay Science over Dismal and Natural Science in Agricultural Policy*, 48 IDAHO L. REV. 213 (2012); Lewis A. Grossman, *Food, Drugs, and Droids: A Historical Consideration of Definitions and Categories in American Food and Drug Law*, 93 CORNELL L. REV. 1091, 1091 (2008) (“[L]awmakers possess substantial power to mold the legal categories of ‘food’ and ‘drug’ so as to advance desired policies.”).

*B. Establishing the Field*

While FL&P may trace its roots to the mid-1980s (when Looney referred to Ag Law & Policy) or the mid-1990s (when Hutt began teaching what we refer to as his “FDA Law and Policy” course), FL&P arose as a distinct field only in the mid-2000s.

Neil Hamilton taught the first-ever law school course to focus on FL&P issues—his “Food and the Law” course at Drake Law School—in 1999.<sup>286</sup> We mark the birth of the field of FL&P as 2004, when Michael T. Roberts taught the first course entitled “Food Law and Policy” to students in the Agricultural Law LL.M. Program at the University of Arkansas School of Law, where he was serving as research professor and director of the National Agricultural Law Center.<sup>287</sup> By that year, a growing number of scholars had also begun discussing and debating FL&P issues in legal journals.<sup>288</sup>

During the same academic year, in the summer 2005, Roberts worked with fellow faculty at the University of Arkansas School of Law to establish the *Journal of Food Law & Policy (JFL&P)*, the first

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286. See E-mail from Prof. Neil D. Hamilton to Baylen J. Linnekin (Apr. 11, 2014, 09:54 EDT) (on file with authors). Hamilton’s inaugural course featured readings from future best-selling authors Eric Schlosser and Michael Pollan. See Neil D. Hamilton, Law 230: Food and the Law: Syllabus 1999 (1999) (on file with authors). See also Neil Hamilton, *Essay—Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9, 14 (2004). The author describes the focus of his course on Food and the Law, which emphasizes “the legal and policy challenges [those working in and around food] face and . . . how government actions can create new opportunities or place obstacles in the way of change.” *Id.*

287. See E-mail from Rhonda B. Adams, Assistant Dean of Academic Affairs & Registrar, Univ. of Ark. Sch. of Law, to Baylen J. Linnekin (July 24, 2013, 15:59 EDT) (on file with authors); E-mail from Prof. Michael T. Roberts to Baylen J. Linnekin (July 20, 2013, 12:09 EDT) (on file with authors); E-mail from Prof. Susan A. Schneider to Baylen J. Linnekin (July 30, 2011, 14:00 EDT) (on file with authors).

288. See, e.g., John Alan Cohan, *Obesity, Public Policy, and Tort Claims against Fast-Food Companies*, 12 WIDENER L.J. 103 (2003); Margaret Gilhooley, *Reexamining the Labeling for Biotechnology in Foods: The Species Connection*, 82 NEB. L. REV. 1088 (2004); Emily J. Schaffer, *Is the Fox Guarding the Henhouse? Who Makes the Rules in American Nutrition Policy?*, 57 FOOD & DRUG L.J. 371 (2002). That momentum continued to grow in succeeding years. See, e.g., Theodore H. Frank, *A Taxonomy of Obesity Litigation*, 28 U. ARK. LITTLE ROCK L. REV. 427 (2006); Alexandra B. Klass, *Pesticides, Children’s Health Policy, and Common Law Tort Claims*, 7 MINN. J.L. SCI. & TECH. 89 (2005); Randolph Kline et al., *Beyond Advertising Controls: Influencing Junk-Food Marketing and Consumption with Policy Innovations Developed in Tobacco Control*, 39 LOY. L.A. L. REV. 603 (2006). Recall that Neil Hamilton’s two necessary criteria for demonstrating the existence of a legal field are legal publications and law school courses. See *supra* note 214 and accompanying text.

scholarly publication focused entirely on the field of FL&P.<sup>289</sup> The *JFL&P* “features articles on food safety and labeling, consumer interest in food policy, international food safety laws and regulations, the legal effects of food technology, traceability issues, and a wide variety of other dynamic issues affecting food law and policy.”<sup>290</sup>

The inaugural issue of the *JFL&P* featured scholarly articles on issues like food democracy, genetically modified organisms (GMOs), and obesity lawsuits against fast-food companies.<sup>291</sup> The author selected to write the introductory article for the *JFL&P* was none other than Peter Barton Hutt.<sup>292</sup> Apart from his unparalleled interest and expertise in FDA Law and FDA Law and Policy and his status as “one of the last great generalists within the food and drug field,”<sup>293</sup> what made Hutt the best person to introduce the upstart *JFL&P* to the world? Hutt was in a unique place among FDA Law professors to witness the rise of FL&P. This is due in part to Hutt’s focus on FDA Law and Policy. But even more important is the unique structure Hutt chose for his Harvard Law School course. While most FDA Law courses culminate with students taking an exam, Hutt’s is likely unique among FDA Law courses in that he instead requires that his students write and submit an original paper addressing an open-ended research question.<sup>294</sup> Additionally, Hutt does not require that students write on a traditional FDCA topic. Finally, and perhaps most importantly (for purposes of evaluating the evolution of the field), Hutt has posted online all of the papers students have written for his course since its inception.<sup>295</sup> Furthermore, the papers are helpfully organized by topic and year.<sup>296</sup>

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289. See *Journal of Food Law and Policy*, U. ARK. SCH. L., <http://law.uark.edu/academics/journals/> (last visited Dec. 18, 2013) (“The Journal of Food Law & Policy is the first student-edited legal journal in the country devoted to the study of food law and its impact on society.”).

290. *Id.*

291. See *Table of Contents*, 1 J. FOOD L. & POL’Y i (2005).

292. *Id.*

293. Divya Subrahmanyam, *Peter Barton Hutt: Celebrating 20 Years at Harvard Law*, HARV. L. TODAY (Feb. 13, 2013), <http://today.law.harvard.edu/peter-barton-hutt-celebrating-20-years-at-harvard-law-video/> (quoting Prof. Lewis A. Grossman).

294. See Hutt, *FDA Law Adventure*, *supra* note 157, at 15 (“Write an essay on any subject of your choice suggested by the casebook, the class presentations, or the class discussion.”).

295. See Peter Barton Hutt, *Table of Contents*, in FOOD AND DRUG LAW: AN ELECTRONIC BOOK OF STUDENT PAPERS, *supra* note 117 [hereinafter Hutt, *Table of Contents*]. The paper-only requirement has existed since 1995. Peter Barton Hutt, *Introduction*, in FOOD AND DRUG LAW: AN ELECTRONIC BOOK OF STUDENT PAPERS, *supra* note 117 [hereinafter Hutt, *Introduction*]. Papers are only posted with student consent. *Id.*

296. See Hutt, *Introduction*, *supra* note 295.

This online posting and categorization of the work of Hutt's students permits basic analysis of the subject matter of the papers across topics and years. With this in mind, we examined the subject matter of student papers from Hutt's Harvard course across its twenty years. We speculated that we would identify patterns of increased student authorship on topics pertaining to FL&P (rather than FDA Law or FDA Law and Policy) in the mid-2000s, when interest in FL&P issues was on the rise.

While space does not permit a detailed analysis of the papers, we identified several trends that support our thesis regarding the rising interest in FL&P issues. For example, the first student paper focusing on the issue of "obesity"—a typical FL&P issue on which the FDCA is silent—did not appear until 2003.<sup>297</sup> Then, between 2003 and 2007, at least thirteen student papers focused on obesity.<sup>298</sup> Two student papers in 2006 and 2007 also focused on food taxes—which some consider to be a tool to fight obesity.<sup>299</sup> The first student paper focused chiefly on the USDA—as distinct from the FDA—did not appear until 2002.<sup>300</sup> Since that time, ten papers have been categorized under the USDA heading.<sup>301</sup>

This brief analysis demonstrates that Hutt's unique course design has given him a distinctive perch from which to witness and consider the remarkable increase in student interest in FL&P issues and topics. It also lends even more support to the idea that Hutt was the ideal scholar to introduce the new field of FL&P to the broader legal community in the inaugural issue of the *JFL&P*.

It is fitting that in his introductory *JFL&P* essay, Hutt echoes Dunn's remarks from sixty years earlier about the unmet needs of the food and drug law community that Dunn's nascent *Food Drug Cosmetic Law Quarterly* had sought to meet.<sup>302</sup> Echoing Dunn again, Hutt hailed the *JFL&P* for "recognizing the importance of this field and seizing the opportunity to serve an unmet need."<sup>303</sup>

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297. See Hutt, *Table of Contents*, *supra* note 295.

298. See *id.*

299. See *id.* (listing Wendy Sheu, *The Evolution of the Modern Snack Tax Bill: From World War I to the War against Obesity* (2006); Maran White, *Raising the Cost of Unhealthy Food: Can Food Taxes and/or Food Industry Liability Solve America's Obesity Problem?* (2007)).

300. See *id.* (listing Emily J. Schaffer, *Is the Fox Guarding the Henhouse?: Who Makes the Rules behind the USDA's Nutrition Policy* (2002)); see also Schaffer, *supra* note 288.

301. See *id.*

302. Hutt, *Food Law & Policy*, *supra* note 1, at 2 ("Until now, there has been no scholarly publication to serve as a focal point for this scholarly research.").

303. *Id.*

But why did FL&P emerge as a field to meet that need when it did? Certainly Hutt (and Dunn well before him) had identified a large body of food-related issues around which scholarship and coursework did not exist. But what caused FL&P to coalesce into a field during the past decade? The answer lies in a combination of factors.

By the late 1990s, journalists had begun attempting to identify and understand the legal and policy roots of some of the health, environmental, and economic outcomes of the food system.<sup>304</sup> For example, journalist Eric Schlosser's bestselling book *Fast Food Nation*, which claimed to expose "the dark side" of America's love of fast food, appeared in 2001.<sup>305</sup> *Fast Food Nation*, with its focus on fast food and obesity, could not have had better timing. The book arrived on store shelves just one week after the U.S. Surgeon General had "announced a year-long effort to develop a national action plan for reducing the prevalence of overweight and obesity in the United States."<sup>306</sup>

Obesity had become a major law and policy issue by 2002. That year, a man named Caesar Barber sued McDonald's and other fast-food companies, alleging that the companies were legally responsible for the fact that he had become obese.<sup>307</sup> The same year saw the start of the *Pelman v. McDonald's Corp.*<sup>308</sup> litigation, which sought to hold the fast-food giant responsible for the obesity and related health problems of two young girls.<sup>309</sup> Together, these lawsuits helped spur interest in the issue among Washington policy makers.<sup>310</sup> Legal scholars soon began to

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304. See, e.g., Michael Pollan, *The Way We Live Now: 12-12-99; Feeding Frenzy*, N.Y. TIMES, Dec. 12, 1999, <http://www.nytimes.com/1999/12/12/magazine/the-way-we-live-now-12-12-99-feeding-frenzy.html> ("Americans are by now so far removed from the farm that we know remarkably little -- at least compared with the Europeans -- about the processes by which food finds its way to our plates.").

305. See generally ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* (2001).

306. See Press Release, U.S. Dep't of Health & Human Servs., Surgeon General Launches Effort to Develop Action Plan to Combat Overweight, Obesity (Jan. 8, 2001), available at <http://www.surgeongeneral.gov/news/2001/index.html> (announcing this first-of-its-kind policy initiative).

307. See Michael Kinsley, *A Lawsuit to Choke On*, TIME, July 31, 2002, <http://www.time.com/time/nation/article/0,8599,332981,00.html>.

308. (*Pelman I*), 237 F. Supp. 2d 512 (S.D.N.Y. 2003).

309. *Id.*; *Pelman v. McDonald's Corp. (Pelman II)*, No. 02 Civ. 7821(RWS), 2003 WL 22052778 (S.D.N.Y. Sept. 3, 2003); *Pelman v. McDonald's Corp. (Pelman III)*, 396 F.3d 508 (2d Cir. 2005); *Pelman v. McDonald's Corp. (Pelman IV)*, 396 F. Supp. 2d 439 (S.D.N.Y. 2005); *Pelman v. McDonald's Corp. (Pelman V)*, 452 F. Supp. 2d 320 (S.D.N.Y. 2006).

310. See Kinsley, *supra* note 307 ("We're too fat, and now even the government is worried about it.").

take note of obesity as a food law and policy issue.<sup>311</sup> Law students did, too.<sup>312</sup> But the issue found no natural outlet in the legal academy in either the field of FDA Law or Ag Law.<sup>313</sup>

Obesity policy and litigation was but one issue that arose in the early 2000s to help usher in the field of FL&P. Another key FL&P issue that immediately preceded and helped to establish FL&P was the protracted battle over the controversial 2002 Farm Bill reauthorization.<sup>314</sup> Debates have only increased in ferocity over more recent Farm Bill reauthorizations in 2008 and 2012.<sup>315</sup> Similarly, the USDA's nationalization of organic food labeling in 2002,<sup>316</sup> the FDA's decision to permit expanded health claims on food packages in the same year,<sup>317</sup> and the EPA's first attempt to bring "concentrated animal feeding operations" (CAFOs) under the Clean Water Act regulations in 2003<sup>318</sup> all made national headlines and piqued the interest of many scholars and professionals—including those within the legal academy.

311. See, e.g., Cohan, *supra* note 288; Margaret Sova McCabe, *The Battle of the Bulge: Evaluating Law as a Weapon against Obesity*, 3 J. FOOD L. & POL'Y 135, 136–37 (2007).

312. See, e.g., Forrest Lee Andrews, Comment, *Small Bites: Obesity Lawsuits Prepare to Take on the Fast Food Industry*, 15 ALB. L.J. SCI. & TECH. 153, 163–64, 174 (2004) (discussing Schlosser and George Washington University Law Professor John Banzhaf, an early proponent of lawsuits against food companies); Valere Byrd Fulwider, Comment, *Future Benefits? Tax Policy, Advertising, and the Epidemic of Obesity in Children*, 20 J. CONTEMP. HEALTH L. & POL'Y 217 (2003) (citing *Fast Food Nation* repeatedly).

313. Hutt, *Food Law & Policy*, *supra* note 1, at 5 (noting many FL&P issues are "wide open for serious investigation").

314. See Ron Smith, *Extremes Make Farm Bill Tough Sell in House*, S.W. FARM PRESS, July 23, 2013, <http://southwestfarmpress.com/government/extremes-make-farm-bill-tough-sell-house> (noting Congress had to extend the period for passage of the 2002 Farm Bill six times because the body could not settle on a compromise bill); Bill Virgin, *Farm Subsidies: A Growing Problem*, SEATTLE POST-INTELLIGENCER, May 13, 2002, <http://www.seattlepi.com/default/article/Farm-subsidies-A-growing-problem-1087160.php>.

315. See DANIEL IMHOFF, *FOOD FIGHT: THE CITIZEN'S GUIDE TO THE NEXT FOOD AND FARM BILL* (2012); Hagstrom, *supra* note 12; Ron Nixon, *Farm Bill Defeat Shows Agriculture's Waning Power*, N.Y. TIMES, July 2, 2013, [http://www.nytimes.com/2013/07/03/us/politics/farm-bill-defeat-shows-agricultures-waning-power.html?\\_r=0](http://www.nytimes.com/2013/07/03/us/politics/farm-bill-defeat-shows-agricultures-waning-power.html?_r=0).

316. See *Organic Certification*, U.S. DEP'T AGRIC. ECON. RES. SERVICE, [http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-certification.aspx#.UzjqJ\\_IdWBY](http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-certification.aspx#.UzjqJ_IdWBY) ("USDA's Agricultural Marketing Service implemented a National Organic Program in 2002.")

317. Vicki Kemper, *FDA Easing Rules for Food Health Claims*, L.A. TIMES, Dec. 19, 2002, <http://articles.latimes.com/2002/dec/19/nation/na-fda19>.

318. 68 Fed. Reg. 7176 (Feb. 12, 2003) (revising 40 C.F.R. pts. 9, 122, 123, 412). Note that the final rule was overturned by the Second Circuit in *Waterkeeper Alliance v. Env'tl. Prot. Agency*, 399 F.3d 486, (2d Cir. 2005), and has led to ongoing EPA regulatory attempts and litigation.

Finally, FL&P emerged thanks in part to the growing focus on food topics in American popular culture over the past decade. Publication of Michael Pollan's *The Omnivore's Dilemma* in 2006 spawned a new era of books, articles, and films drawing attention to challenges facing the food system.<sup>319</sup> We have simultaneously seen the ascent of what many have referred to as America's "foodie moment."<sup>320</sup> This trend is evidenced in part by the rise of the *Food Network* television channel in the early 2000s—aided by the sudden star quality of restaurant veterans like Anthony Bourdain<sup>321</sup> and Jamie Oliver<sup>322</sup>—and by the increasing popularity and ubiquity of competitive cooking programs like *Top Chef*.<sup>323</sup>

Stemming from the work of these policy makers, scholars, and pop culture icons, increased discussions about food have permeated American society over the past decade. These discussions have in turn penetrated the legal academy and helped foster increased course offerings, scholarship, and attention to FL&P issues.

### III. THE PRESENT AND FUTURE OF FL&P

While FL&P emerged in the mid-2000s, the field's growth has mushroomed in the present decade. Several key data demonstrate this vast recent expansion. Through our study of the history of FDA Law and Ag Law, the development of FL&P, and our consideration of various criteria for evaluating fields of law,<sup>324</sup> we have identified ten distinct

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319. MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006); *see also* JONATHAN SAFRAN FOER, *EATING ANIMALS* (2009); MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* (2002); *FOOD, INC.* (Magnolia Home Entertainment 2008); *SUPERSIZE ME* (Morgan Spurlock 2004).

320. *See, e.g.*, KYLA WAZANA TOMPKINS, *RACIAL INDIGESTION: EATING BODIES IN THE 19TH CENTURY 2* (2012) (referring to "the current foodie moment").

321. Michael Endelman, *Chef Brings a Taste of MTV to Food Network*, BOS. GLOBE, Jan. 9, 2002, at E3 ("Following the lead of Emeril Lagasse and Bobby Flay is Anthony Bourdain, executive chef of the New York bistro Les Halles, the latest knife-wielding gourmand to journey from the burners to the camera with 'A Cook's Tour,' a weekly series on the Food Network that debuted last night.").

322. Joel Brown, *Television Review: England's "Naked Chef" Bucks for Success on Food Network*, BOS. HERALD, Nov. 4, 2000, at 31 ("[Oliver's] BBC show, 'The Naked Chef,' is a hit in England, and now the Food Network hopes it will translate on this side of the Atlantic.").

323. *Top Chef Season 1*, BRAVO, <http://www.bravotv.com/top-chef/season-1> (last visited Oct. 31, 2013) (describing the show's 2006 debut season).

324. There is no one set of criteria for determining whether a field of law exists. *See, e.g.*, Martin Levine, *Four Visions of the Law School: "Law and Aging" as a New Legal Field*, 31 J. LEGAL EDUC. 424, 424 n.2 (1981) ("There are, of course, many . . . ways to approach the question of whether a field exists."); *see also id.* at 426 & n.17



areas that demonstrate the maturity of this academic field. These factors are: (1) academic scholarship, (2) law school courses, (3) degree programs, (4) academic centers, (5) casebooks and other texts, (6) field-specific legal journals, (7) clinical and experiential education, (8) student societies and groups, (9) professional associations and bar groups, and (10) academic conferences.

#### A. FL&P after One Decade

These ten criteria provide us with a valuable lens through which to view the state of FL&P today and to compare it to the present state of both FDA Law and Ag Law. We begin with Neil Hamilton's two necessary criteria for establishing the existence of a scholarly field—academic scholarship and law school courses.

#### I. ACADEMIC SCHOLARSHIP

To measure the scholarly works related to the field of FL&P, we searched in HeinOnline,<sup>325</sup> an online repository of scholarly legal research, for various terms that are associated with FL&P. We searched HeinOnline data from 1950 to the present. The results of our searches support the argument that there exists “a large and growing literature” of FL&P scholarship.<sup>326</sup>

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(listing various reviews seeking to answer the question of “whether or not a division of the law is to be recognized as a separate course and field” published between 1914 and 1979).

One set of criteria for determining whether an area of law constitutes a field, the “Policy Model,” offers further proof of FL&P's status as a definitive field. *See id.* at 447–48. Other criteria look at various factors to assess a field's growth. *See, e.g.,* Nina A. Kohn & Edward D. Spurgeon, *Elder Law Teaching and Scholarship: An Empirical Analysis of an Evolving Field*, 59 J. LEGAL EDUC. 414, 418 (2010) (assessing a field by determining the availability of law school courses in the field, discerning characteristics of academic faculty who teach those courses, comparing the format and content of the courses, assessing links between teaching and scholarship in the field, and describing student interest in the field). Still other measures of a field highlight the existence of a casebook and the availability of clinical and experiential education focused on the field. *See generally* Elizabeth M. Schneider & Cheryl Hanna, *The Development of Domestic Violence as a Legal Field: Honoring Clare Dalton*, 20 J.L. & POL'Y 343, 350 (2012).

325. HEINONLINE, <http://home.heinonline.org/> (last visited Dec. 18, 2013).

326. Jay A. Mitchell, *Getting into the Field*, 7 J. FOOD L. & POL'Y 69, 76–78 (2011) (listing relevant issues, including agricultural law and policy, regulations, constitutional concerns, health and nutrition, “and other aspects of food production and distribution”).

The term “food policy,” largely missing from the domestic legal lexicon throughout the 1900s,<sup>327</sup> has appeared at least 430 times in U.S. law journals since 2000—including at least 236 times since 2010.<sup>328</sup> Altogether, 76 percent of all mentions of food policy have occurred since 2000.<sup>329</sup> Notably, legal research on local and state FL&P issues in particular has increased dramatically in recent years.<sup>330</sup>

TABLE 1: FOOD POLICY SCHOLARSHIP

Decade	Articles
1950–59	3
1960–69	5
1970–79	16
1980–89	50
1990–99	59
2000–09	194
2010–Present	236

In addition, scholarly journal articles that address *both* Ag Law and FDA Law—common in FL&P but virtually unknown in either of the discrete fields—became increasingly common this century. Altogether, 71 percent of all such scholarship has been published since 2000.<sup>331</sup>

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327. See *supra* notes 281–83 and accompanying text (noting that discussions of domestic “food policy” were missing from legal scholarship prior to 2000).

328. “Food Policy” Search Results, HEINONLINE, <http://www.heinonline.org/> (follow “Core U.S. Journals” hyperlink; search for “food policy;” then select “articles;” then select “United States” as the country published; then view results by decade).

329. See *id.*

330. See, e.g., Braaten & Coit, *supra* note 285; Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL’Y 45, 45–47 (2008); Ellen Fried & Michele Simon, *The Competitive Food Conundrum: Can Government Regulations Improve School Food?*, 56 DUKE L.J. 1491, 1491–92 (2007); Neil D. Hamilton, *Putting a Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 DRAKE J. AGRIC. L. 407, 408–12 (2002); Margaret Sova McCabe, *Reconsidering Federalism and the Farm: Toward Including Local, State and Regional Voices in America’s Food System*, 6 J. FOOD L. & POL’Y 151, 151 (2010).

331. “‘Agricultural Law’ and ‘FDA’” Search Results, HEINONLINE, <http://www.heinonline.org/> (follow “Core U.S. Journals” hyperlink; search for “‘agricultural law’ AND ‘FDA;’” then select “articles;” then select “United States” as the country published; then view results by decade).

TABLE 2: COMBINED AGRICULTURAL LAW AND FDA LAW  
SCHOLARSHIP

<b>Decade</b>	<b>Articles</b>
1950–59	2
1960–69	0
1970–79	0
1980–89	6
1990–99	23
2000–09	53
2010–Present	27

A similar search for the terms FDA and USDA both appearing in a given journal article also yields telling results. Here, 66 percent of all such mentions—more than 1,000 articles—have occurred just this century.<sup>332</sup>

TABLE 3: FDA AND USDA SCHOLARSHIP

<b>Decade</b>	<b>Articles</b>
1950–59	7
1960–69	32
1970–79	86
1980–89	140
1990–99	174
2000–09	472
2010–Present	382

A search for articles addressing both the FDA and farm subsidies—a set of policies not carried out by the FDA—yields similar results.<sup>333</sup> This search is particularly useful for identifying articles that connect policies related to food from different governmental agencies, illustrating how FL&P scholarship is unbounded by traditional “FDA Law” or “Agricultural Law” strictures. The data reveal that 76 percent of all such scholarship has been published since 2000—and that the FDA and farm

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332. “FDA and USDA” Search Results, HEINONLINE, <http://www.heinonline.org/> (follow “Core U.S. Journals” hyperlink; search for “FDA AND USDA;” select “articles;” then select “United States” as the country published; then view results by decade).

333. “‘FDA’ and ‘Farm Subsidies’” Search Results, HEINONLINE, <http://www.heinonline.org/> (follow “Core U.S. Journals” hyperlink; search for “‘FDA’ AND ‘farm subsidies;’” then select “articles;” then select “United States” as the country published; then view results by decade).

subsidies have appeared together in more articles written just since 2010 than they did in all the years from 1950 to 1999 combined.<sup>334</sup>

TABLE 4: FDA AND FARM SUBSIDY SCHOLARSHIP

Decade	Articles
1950–59	0
1960–69	0
1970–79	2
1980–89	3
1990–99	8
2000–09	24
2010–Present	17

FL&P scholarship has grown by leaps and bounds during its first decade. Articles that focus on food policy and FL&P have exploded in popularity in recent years. Scholarly works that leave behind traditional FDA Law or Ag Law strictures and that reference both the FDA and USDA—a practice that was largely unknown during the past century—are also now commonplace. These examples all highlight the fact that FL&P scholarship is both widespread and growing.

## 2. LAW SCHOOL COURSES

To evaluate Hamilton’s second necessary criterion for establishing the existence of a field, we looked at the top 100 U.S. law schools to learn how many of these schools offered FL&P courses during the 2010–13 academic years. Our research consisted of a combination of online research conducted at the websites of law school registrars and phone calls and emails to law school registrars and faculty.

Our search captured a range of courses that fit our definition of FL&P.<sup>335</sup> We found twenty schools that offered at least one (and sometimes more than one) FL&P course during this period.<sup>336</sup> These data compare favorably to the number of schools that offer Ag Law and FDA Law courses—data we also gathered using the same means—during the same three-year period and establish the growing acknowledgement of FL&P as a fertile area of classroom instruction.

334. *Id.*

335. *See* Part II.A (“FL&P . . . is the study of the basis and impact of those laws and regulations that govern the entire food system and the beverages we grow, raise, produce, transport, buy, sell, distribute, share, cook, eat, and drink.”) (citation omitted).

336. *See infra* tbl.5.

TABLE 5: TOP-100 LAW SCHOOLS FEATURING COURSES (2010–13)<sup>337</sup>

<b>FL&amp;P</b>	<b>FDA Law</b>	<b>Ag Law</b>
20	41	16

Our research also reveals that a handful of top law schools that previously offered FDA Law courses have stopped doing so in recent years. For example, the University of Kansas School of Law stopped offering FDA Law courses in 2009.<sup>338</sup> Fordham University School of Law, Louisiana State University Law Center, and the University of Wisconsin Law School also stopped offering FDA Law courses sometime before 2011.<sup>339</sup> The University of Wisconsin Law School now offers an FL&P course.

The table below lists the names of FL&P courses offered at twenty top U.S. law schools at least once during the 2010–13 academic years.<sup>340</sup>

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337. See Baylen J. Linnekin, Emily M. Broad Leib & Karissa Orris, Food Law Classes at the Top 100 Law Schools (July 15, 2013) (unpublished manuscript) (on file with authors).

338. *Id.* at 32–33.

339. *See id.* at 15.

340. In the event a school offered more than one such course, we selected one representative course title from the relevant period.

TABLE 6: FL&amp;P COURSES (2010–13)

Law School	FL&P Course Name
Duke University	Food and Agricultural Law Policy
Georgetown University	Food Law Seminar
Harvard University	Food Law and Policy
IIT/Chicago-Kent	Law and Food
Lewis & Clark College	Sustainable Food & Agricultural Law
Michigan State University	Urban Food, Farm & Agriculture Law Practicum
University of Arkansas-Fayetteville	Food Law & Policy
University of California-Berkeley	Food Law and Policy
University of California-Davis	Law and Culture of Food
University of California-Los Angeles	Food Law and Policy
University of Chicago	Food Law
University of Colorado-Boulder	Food Law and Policy Seminar
University of Hawaii	Topics in Environmental Law: Food Security
University of Illinois	Domestic Food Policy Seminar
University of Miami	Food Law
University of Missouri-Columbia	Food Law & Policy
University of North Carolina	Agricultural/Food Law and Policy
University of Oregon	Seminar on the Law of Wine
University of Wisconsin	Food Law
West Virginia University	Agriculture & Food Law

These FL&P courses focus on the creation of food laws and policies at all levels of government, with growing course time devoted to local and state food laws and the interplay between local, state, and federal food policy.

One example of a broad-ranging FL&P course from among those noted above is Harvard's Food Law and Policy Seminar.<sup>341</sup> The course considers how law and policy shape the U.S. food system; educates students about federal agricultural policy and farm subsidies; and analyzes the environmental, health, and safety implications of our current

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341. *Food Law and Policy*, HARV. L. SCH., <http://www.law.harvard.edu/academics/curriculum/catalog/index.html?o=65892> (last visited Dec. 31, 2013); Unpublished course materials (on file with authors).

system of production at all levels of government.<sup>342</sup> Students learn about current debates regarding “genetically modified crops” and the meanings of the terms “organic,” “sustainable,” “fair trade,” and other food labels.<sup>343</sup> The course also examines the role the government plays in determining what foods are consumed in the United States, through its food assistance programs and dietary guidelines, before evaluating a range of existing and potential policy interventions from the United States and abroad.<sup>344</sup>

The reading materials for the seminar are provided in a course reader and include “various book chapters, cases, regulations, news reports, and scholarly articles that present diverse viewpoints on the topics presented.”<sup>345</sup> The course examines food policy from various perspectives and “is intended to spark debate between different sides of these often controversial issues.”<sup>346</sup> Student assignments include preparing white papers on various topics and participating in in-class simulations and role-playing exercises.<sup>347</sup> Though this is just one example, the course’s focus on topics from across the food system and the use of non-traditional readings in addition to traditional case law is representative of the trend across FL&P courses.

### 3. DEGREE PROGRAMS

Currently, there is no dedicated FL&P certificate or LL.M. program. Notably though, the University of Arkansas’s LL.M. degree program in Agricultural Law, first established in 1980, changed the name of the degree it awards in 2009 to an LL.M. in Agricultural *and Food* Law.<sup>348</sup> The change emphasizes the program’s increased commitment to and focus on FL&P. Following on the heels of the LL.M. program’s rebranding, its curriculum has also greatly expanded in terms of its FL&P offerings. Approximately half of the thirty-four courses that constitute the current curriculum of the LL.M. program fit our definition of FL&P courses.<sup>349</sup> Those classes include Food Law & Policy;

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342. *Food Law and Policy*, *supra* note 341.

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *See History of the LL.M. Program*, U. ARK. SCH. L., <http://law.uark.edu/academics/llm/history-of-the-ll-m-program/> (last visited Dec. 17, 2013) (emphasis added).

349. *See* LL.M. CURRICULUM, LL.M. PROGRAM IN AGRICULTURAL & FOOD LAW (2013) (on file with authors); Susan A. Schneider, *The LL.M. Program in Agricultural & Food Law: Promoting an Integrated Legal Study of our Food System* 1–2 (n.d.)

Introduction to the Law of Food & Agriculture; Food Justice: Law & Policy; and Urban Agriculture: Law & Policy.<sup>350</sup> The remainder are Ag Law courses.<sup>351</sup> In addition to Arkansas's LL.M. program, Drake Law School also offers a certificate in Food and Agricultural Law.<sup>352</sup>

#### 4. ACADEMIC CENTERS

Professor Michael T. Roberts recently helped spearhead the creation of University of California-Los Angeles School of Law's new Resnick Program for Food Law and Policy, where he serves as director.<sup>353</sup> The center, a major new initiative and the first of its kind dedicated to FL&P, "will focus on reforming food law and policy . . ."<sup>354</sup> Its work will include publishing "policy briefs and position papers . . . [and] will also feature an educational component with conferences, classes, workshops and scholarly publications to foster future leaders in the food law and policy arena."<sup>355</sup> Other law schools are creating similar centers, like the recently launched Center for Agriculture and Food Systems at Vermont Law School.<sup>356</sup> Harvard Law School also recently launched a Food Law Lab, which operates as an academic partner with the school's Food Law and Policy Clinic.<sup>357</sup> We anticipate that the coming years will bring about a proliferation of similar FL&P-focused centers.

#### 5. CASEBOOKS AND OTHER TEXTS

A traditional casebook would be inappropriate for the field of FL&P because the field focuses largely on issues and policies pertaining to food

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(unpublished draft summary) (on file with authors); *LL.M. in Agricultural and Food Law*, U. ARK. SCH. L., <http://law.uark.edu/academics/llm/#courses> (last visited Apr. 25, 2014).

350. See Schneider, *supra* note 349, at 1–2.

351. See *id.*

352. See *Certificate Requirements*, DRAKE L., <http://www.law.drake.edu/academics/?pageID=foodAgLawCert> (last visited Dec. 18, 2013).

353. *Faculty Page of Michael T. Roberts*, UCLA SCH. L., <http://law.ucla.edu/faculty/all-faculty-profiles/adjunctslecturers/Pages/michael-roberts.aspx> (last visited Dec. 18, 2013).

354. Lauri Gavel, *UCLA School of Law Establishes Resnick Program for Food Law and Policy*, UCLA SCH. L. (May 24, 2013), <http://www.law.ucla.edu/news-media/Pages/News.aspx?NewsID=2393>.

355. *Id.*

356. *Center for Agriculture and Food Systems*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/Environmental\\_Law\\_Center/Institutes\\_and\\_Initiatives/About.htm](http://www.vermontlaw.edu/Academics/Environmental_Law_Center/Institutes_and_Initiatives/About.htm) (last visited Dec. 31, 2013).

357. Elaine McArdle, *Thought for Food: Contemplating New Regulations in a Global Economy*, HARV. L. BULL., Winter 2014, at 23, 24, available at <http://today.law.harvard.edu/feature/thought-for-food/>.



rather than on legal cases. As of 2013, the first FL&P text has yet to be written. *Food Regulation*, a 2007 text by Michigan State University Professor Neal Fortin, focuses mostly on FDA Law and Policy as pertains to food, though the book does contain a brief discussion of some FL&P issues.<sup>358</sup> University of Arkansas Professor Susan A. Schneider's 2011 text, *Food, Farming, and Sustainability: Readings in Agricultural Law*, also touches on FL&P issues, but it is grounded largely in Ag Law & Policy.<sup>359</sup> And Tufts University Professor Parke Wilde, an agricultural economist, focuses only on food policy (and not law) in his 2013 text, *Food Policy in the United States: An Introduction*.<sup>360</sup>

A cursory survey of syllabi from various FL&P courses around the country shows that in the absence of a definitive FL&P text, scholars are compiling creative and varied course packets to provide students with diverse readings.<sup>361</sup> It would not be surprising to see one or more texts emerge from these course packets and from other sources in the coming years.

#### 6. DEDICATED LEGAL JOURNALS

Like FDA Law and Ag Law, FL&P has its own dedicated law journal, the aforementioned *Journal of Food Law & Policy* at the University of Arkansas School of Law.<sup>362</sup> The *Food and Drug Law Journal*, published by the FDLI, is the sole FDA Law journal. Ag Law boasts several specialized journals: the *Drake Journal of Agricultural Law*, *San Joaquin Agricultural Law Review*, and *Kentucky Journal of Equine, Agriculture, & Natural Resources Law*.

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358. See generally NEAL D. FORTIN, *FOOD REGULATION: LAW, SCIENCE, POLICY, AND PRACTICE* (2009).

359. See generally SCHNEIDER, *supra* note 258.

360. See PARKE WILDE, *FOOD POLICY IN THE UNITED STATES: AN INTRODUCTION* (2013).

361. See, e.g., Linnekin, Broad Leib & Orris, *supra* note 337; *Food & Agricultural Law and Policy*, DUKE L. CURRICULUM, <http://web.law.duke.edu/curriculum/courseinfo/course?id=475&all=1> (last visited Dec. 31, 2013); *Food Law and Policy, Course Catalog*, HARV. L. SCH., <http://www.law.harvard.edu/academics/curriculum/catalog/index.html?o=65892> (last visited Dec. 31, 2013); *Law 634 - Food Law and Policy, Curriculum Guide*, UCLA SCH. L., <https://curriculum.law.ucla.edu/Guide/InstructorCourse/246?i=154> (last visited Dec. 31, 2013).

362. See Mitchell, *supra* note 326, at 78 & n.29 (referring to the *Journal of Food Law & Policy*, the *Drake Agricultural Law Journal*, and the *Food and Drug Law Journal*). San Joaquin College of Law is home to the *San Joaquin Agricultural Law Review*. See *San Joaquin Agricultural Law Review*, SAN JOAQUIN C. L., <http://www.sjcl.edu/index.php/law-review> (last visited Dec. 18, 2013).

## 7. CLINICAL AND EXPERIENTIAL EDUCATION

Along with the rapid spread of FL&P courses, FL&P has made possibly its most dramatic academic inroads in recent years in the area of clinical and experiential legal education. Harvard's Food Law and Policy Clinic (FLPC) was the first dedicated FL&P clinic in the nation.<sup>363</sup> Other dedicated clinics are emerging. For example, Michigan State University recently launched an Urban Food, Farm, and Agricultural Law Clinic.<sup>364</sup> Still other clinics across the country focus on FL&P issues to some degree. In an online search of the websites of the top 100 law schools, we found that 30 different clinics at 23 of the top 100 schools were in the midst of or had completed at least one project that engaged in FL&P work as of the time of this writing.<sup>365</sup>

There are several reasons for this incredible growth. Food and agricultural issues present unique opportunities for law students to work on a wide variety of legal skills.<sup>366</sup> The food system can present law students with "an unusually attractive source of projects" that traverse a variety of legal disciplines.<sup>367</sup> And food is "a subject of intense public interest, regulatory attention, commercial evolution, and sector innovation."<sup>368</sup> A clinic focused on issues related to food "features a wide variety of activities, actors, legal issues and literature."<sup>369</sup> Policy work is one widely available opportunity for students to engage in experiential learning about the food system.<sup>370</sup>

The work of FL&P clinics varies. For example, Harvard's FLPC works nationally to link Harvard law students with opportunities to provide legal assistance to individuals, communities, and government on a wide range of food policy issues.<sup>371</sup> The FLPC aims to increase access to healthy foods, prevent diet-related diseases, and assist small and

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363. See McArdle, *supra* note 357; *Cornucopia of Opportunities*, *supra* note 2.

364. *Urban Food, Farm & Agricultural Law Practicum*, MICH. ST. U. C. L., <http://www.law.msu.edu/clinics/food/index.html> (last visited Dec. 10, 2013).

365. See Emily M. Broad Leib, Baylen J. Linnekin, Kathleen Eutsler & Emma Kravet, *FL&P Clinical Practices at the Top 100 Law Schools* (July 1, 2013) (unpublished manuscript) (on file with authors).

366. See Mitchell, *supra* note 326, at 70 ("[W]orking with organizations and individuals active in agriculture and the food system . . . suggest[s] an opportunity for law school experiential educational programs.").

367. *Id.*

368. *Id.* at 71.

369. *Id.*

370. *Id.* at 72–73.

371. *Food Law and Policy: About*, HARV. L. SCH. CENTER HEALTH L. & POL'Y INNOVATION, <http://www.chlpi.org/food-law-and-policy/about/> (last visited Apr. 17, 2014).

sustainable farmers and producers in breaking into new commercial markets.<sup>372</sup>

The FLPC utilizes an in-house clinic model, offering students the opportunity to participate in a diverse range of projects each semester.<sup>373</sup> This structure allows students to engage in projects that focus on different elements of the food system, work in diverse geographic areas, and seek to modify policy at different levels of government. Growing concern about the food system has motivated governmental actors to look for solutions, affording students meaningful opportunities to influence significant and positive legislative and regulatory changes. Focusing on FL&P in a clinical setting also provides students with “the opportunity to develop a range of problem-solving, policy analysis, research and writing, oral communication, and leadership skills.”<sup>374</sup>

The FLPC opened its doors as a stand-alone clinic in the fall of 2011.<sup>375</sup> Since that time it has trained more than fifty students via the full clinical experience, not including dozens of volunteer or pro bono students who contribute to clinic projects; served twenty-five client or partner individuals or organizations; and produced fifteen major policy reports, along with numerous shorter briefs, handouts, fact sheets, and trainings.<sup>376</sup>

As we described above, other law school clinics, recognizing the growing interest in FL&P, now focus on recruiting food system or food policy clients. Outside of FL&P-focused clinics, many projects emerged from clinics focusing on environmental law, health law, transactional law, community economic development, or human rights law. For example, approximately 30 percent of clients represented by Stanford Law School’s Organizations and Transactions Clinic work in the food system.<sup>377</sup> The Yale Community and Economic Development Clinic “promotes local agriculture and community access to wholesome food through the representation of CitySeed, Inc., a nonprofit based in New Haven, and the New Haven Food Policy Council.”<sup>378</sup> Georgetown’s

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372. *About Us*, HARV. FOOD L. & POL’Y CLINIC, <http://blogs.law.harvard.edu/foodpolicyinitiative/about/about-us/> (last visited Mar. 16, 2014).

373. *Projects*, HARV. FOOD L. & POL’Y CLINIC, <http://blogs.law.harvard.edu/foodpolicyinitiative/food-policy-initiative-projects/> (last visited Mar. 16, 2014).

374. *About Us*, *supra* note 372.

375. *Id.*

376. *Id.*

377. *See* Mitchell, *supra* note 326, at 85–86.

378. *Yale University President’s Public Service Fellowship, Proposal for Fellowship Placement, Summer 2012*, COMMUNITY & ECON. DEV. CLINIC YALE L. SCH. (2011), <http://www.yale.edu/ppsf/documents/YaleLawSchool--CommunityandEconomicDevelopmentClinic.pdf>. *See also* Ludwig Center for Community & Economic Development, YALE L. SCH., <http://www.law.yale.edu/academics/Ludwig.htm> (last

Harrison Institute for Public Law maintains an ongoing project focused on improving school meals.<sup>379</sup> The Turner Environmental Law Clinic at Emory University released a sixteen-city study of local laws impacting urban agriculture and made recommendations for Atlanta to improve the climate for urban farming.<sup>380</sup> And the Social Justice Clinic at Fordham Law School lists as an area of its work “finding ways to improve access to affordable and nutritious food for New Yorkers with low incomes.”<sup>381</sup>

In addition to this burst of clinical activity, FL&P issues are also increasingly common elements in other areas of experiential legal education. For example, the 2013 National Moot Court Competition centered on a fictional case involving a challenge by beverage manufacturers to a law enacted by the fictitious state of “Old York” that attempts to combat obesity by tightening regulations pertaining to the sale of soda in the state.<sup>382</sup> This national competition, which celebrated its sixty-fourth year in 2013, involved nearly 200 teams of law students from 131 law schools around the country.<sup>383</sup>

The scope and breadth of clinical and experiential legal education available to students around the country in the area of FL&P is a key marker of the field’s importance and remarkable growth.

## 8. STUDENT SOCIETIES

Student-led FL&P societies have emerged this decade at several law schools, including Chicago,<sup>384</sup> Fordham,<sup>385</sup> Harvard,<sup>386</sup> Mississippi,<sup>387</sup>

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visited Apr. 22, 2014) (noting that “[s]tudents helped a local nonprofit organization that operates community gardens and provides education on healthy eating to underserved communities expand their business to farmers markets while complying with IRS requirements. . . . [They] also negotiated a lease for a new farming site”).

379. *Health and Food Policy*, Harrison Institute for Public Law, GEORGETOWN L., <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/HIP/health-food-work.cfm> (last visited Dec. 10, 2013).

380. See generally MINDY GOLDSTEIN ET AL., EMORY L. TURNER ENVTL. L. CLINIC, URBAN AGRICULTURE: A SIXTEEN CITY SURVEY OF URBAN AGRICULTURE PRACTICES ACROSS THE COUNTRY (2011), available at [http://www.law.emory.edu/fileadmin/turner/Urban\\_Agriculture\\_Report\\_FINAL.pdf](http://www.law.emory.edu/fileadmin/turner/Urban_Agriculture_Report_FINAL.pdf).

381. *Clinic, Feerick Center*, FORDHAM U. SCH. L., <http://law.fordham.edu/feerick-center/8369.htm> (last visited Dec. 10, 2013).

382. See N.Y.C. BAR, SIXTY-FOURTH ANNUAL NATIONAL MOOT COURT COMPETITION TRANSCRIPT OF RECORD: FRAPER V. ASS’N OF BEVERAGE PRODUCERS & RETAILERS (2013), available at <http://www.nycbar.org/images/stories/Moot/transcript-of-record-64th-annual-national-moot-court-competition-corrected2.pdf>.

383. See N.Y.C. BAR, 193 TEAMS FROM 131 LAW SCHOOLS (n.d.), available at <http://www.nycbar.org/images/stories/Moot/participating-schools-64-annual-national-moot-court-competition.pdf>.

384. *Food Law Society*, U. CHI. SCH. L., [www.law.uchicago.edu/studentorgs/foodlaw](http://www.law.uchicago.edu/studentorgs/foodlaw) (last visited Dec. 19, 2013).

NYU,<sup>388</sup> UCLA,<sup>389</sup> Washington,<sup>390</sup> Wisconsin,<sup>391</sup> and Yale.<sup>392</sup> Nathan Rosenberg, one of the founders of Harvard Law School's Food Law Society—established in 2010, prior to the launch of Harvard's FLPC—said that he happened upon the idea of a student-led FL&P society because his law school offered classes in Health Law and FDA Law “[b]ut food didn’t seem to be on the radar screen at law school.”<sup>393</sup> In addition to their spread to several law schools, the popularity of these societies is evidenced by high student interest at these schools.<sup>394</sup>

## 9. PROFESSIONAL ASSOCIATIONS AND BAR GROUPS

Unlike FDA Law (which has the FDLI) and Ag Law (which has the AALA), FL&P presently has no professional membership association (such as an “American Food Law & Policy Association”) to foster and promote the interests of the field.<sup>395</sup> Similarly, the Association of American Law Schools (AALS), a membership group that promotes “improvement of the quality of legal education”<sup>396</sup> throughout America’s law schools, does not list FL&P as a distinct field in its annual directory

385. *Farm to Fordham*, FORDHAM U. SCH. L., <http://law.fordham.edu/public-interest-resource-center/17927.htm> (last visited Dec. 19, 2013).

386. *Harvard Food Law Society*, HARV. U. SCH. L., [www3.law.harvard.edu/orgs/foodlaw/](http://www3.law.harvard.edu/orgs/foodlaw/) (last visited Dec. 19, 2013).

387. Louisa Kasdon, *From Courtroom to Kitchen*, STUFFBOSTON.COM (Aug. 22, 2011), <http://stuffboston.com/2011/08/22/from-courtroom-to-kitchen#.UHKLlGRATSw>.

388. *Food Law*, N.Y.U. SCH. L., <http://www.law.nyu.edu/studentorganizations/foodlaw/> (last visited Dec. 19, 2013).

389. *Food Law Society*, UCLA SCH. L., <http://orgs.law.ucla.edu/fls/Pages/default.aspx> (last visited Oct. 13, 2013).

390. *Food Law Society*, WASH. SCH. L., <http://uwfoodlawsociety.wordpress.com/about/> (last visited Dec. 19, 2013).

391. *Wisconsin Agricultural and Food Law Society*, U. WIS. L. SCH., <http://hosted.law.wisc.edu/wordpress/wafls/> (last visited Dec. 19, 2013).

392. See E-mail from Graham Downey, Yale Law Sch. student, to Baylen J. Linnekin (Nov. 26, 2013, 16:29 EDT) (on file with authors).

393. Kasdon, *supra* note 387 (noting the law has great impact on food and “lots of law-school students [are] very interested in food” (quoting Nate Rosenberg)).

394. Mitchell, *supra* note 326, at 79 n.35 (quoting a founder of Harvard Law School’s student-led Food Law Society as reporting “‘overwhelming’ student interest in food policy issues”). In 2011, Harvard’s society had 150 members. See Kasdon, *supra* note 387. The societies are important because they provide students the opportunity to advocate on behalf of clients in the policy realm. See Mitchell, *supra* note 326, at 79 (“The fact that students may view food-system work from a philosophical or policy point of view is valuable.”).

395. The authors of this Article recently joined with others in the field to lay the groundwork for establishing such an association in 2014.

396. AALS, <http://www.aals.org> (last visited Dec. 23, 2013).

of law faculty.<sup>397</sup> Neither does it list FDA Law,<sup>398</sup> though it does name Ag Law as a distinct field.<sup>399</sup> Notably, the AALS recently renamed its section on Agricultural Law as the Section on Agricultural *and Food* Law.<sup>400</sup>

Various state bar associations boast sections devoted to FDA Law<sup>401</sup> and to Ag Law.<sup>402</sup> However, there does not yet exist a corresponding FL&P section at the state (or national) level.

#### 10. ACADEMIC CONFERENCES

In recent years, FL&P conferences and symposia have taken place at Harvard,<sup>403</sup> Stanford,<sup>404</sup> Yale,<sup>405</sup> Chicago,<sup>406</sup> Duke,<sup>407</sup> Washington,<sup>408</sup>

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397. See generally ASS'N OF AM. LAW SCH., 2011-2012 DIRECTORY OF LAW TEACHERS (2011-12).

398. See *id.*

399. See *id.* at 1441, 1450.

400. See *Section on Agricultural and Food Law*, AALS, [https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp\\_cst\\_key=9744d7fd-4898-415c-8c15-4740cc8f204e](https://memberaccess.aals.org/eweb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=9744d7fd-4898-415c-8c15-4740cc8f204e) (last visited Dec. 18, 2013) (emphasis added).

401. See, e.g., *Food, Drug and Cosmetic Law Section*, *supra* note 46; *Food, Drug & Device Law Section*, MINN. ST. B. ASS'N, <http://www.mnbar.org/sections/food-drug/> (last updated Aug. 21, 2012).

402. See, e.g., *Agriculture Law Section*, ST. B. GA., <http://www.gabar.org/committeesprogramssections/sections/agriculture/index.cfm> (last visited Apr. 14, 2014); *Agricultural Law*, ILL. ST. B. ASS'N, <http://www.isba.org/sections/aglaw> (last visited Apr. 14, 2014); *Agricultural Law*, IND. ST. B. ASS'N, <http://www.inbar.org/ISBALinks/Sections/SectionsPublic/AgriculturalLaw/tabid/259/Default.aspx> (last updated Apr. 25, 2014); IOWA ST. B. ASS'N, [www.iowabar.org](http://www.iowabar.org) (last visited Apr. 25, 2014) (follow “Member Groups” hyperlink, then follow “Agricultural Law” hyperlink).

403. *TEDx Harvard Law: Forum on Food Policy*, HARV. FOOD L. SOC., <http://www3.law.harvard.edu/orgs/foodlaw/tedx-harvard-law-forum-on-food-policy/> (last visited Oct. 9, 2013); *2013 Forum on Food Labeling*, HARV. FOOD L. SOC., <http://www3.law.harvard.edu/orgs/foodlaw/event-recordings/2013-forum-on-food-labeling/> (last visited Oct. 9, 2013).

404. *Stanford Law & Policy Review Food Policy Symposium*, STAN. U., [http://foodsecurity.stanford.edu/events/stanford\\_law\\_\\_policy\\_review\\_food\\_policy\\_symposium/](http://foodsecurity.stanford.edu/events/stanford_law__policy_review_food_policy_symposium/) (last visited Oct. 9, 2013).

405. *Developing Food Policy: U.S. & International Perspectives*, YALE L. SCH., <http://www.law.yale.edu/news/foodpolicyconference.htm> (last visited Oct. 9, 2013).

406. *My Streets, My Eats: Chicago Mobile Food Symposium and Meet Up*, INST. JUST. CLINIC ON ENTREPRENEURSHIP, <http://ij.org/my-streets-my-eats-symposium> (last visited Oct. 14, 2013).

407. *Symposium*, DUKE F. FOR L. & SOC. CHANGE, <http://dfslc.law.duke.edu/symposium/> (last visited Oct. 9, 2013).

408. UNIV. OF WASH. SCH. OF LAW ET AL., *TOWARDS GLOBAL FOOD LAW: TRANSATLANTIC COMPETITION AND COLLABORATION* (2013), *available at* <http://www.law.washington.edu/events/foodlaw/programschedule.pdf>.

Fordham,<sup>409</sup> Chapman,<sup>410</sup> Oregon,<sup>411</sup> Northeastern,<sup>412</sup> Maine,<sup>413</sup> Vermont Law School,<sup>414</sup> Wisconsin,<sup>415</sup> and other law schools around the country. CLE seminars—including the annual “Eating and the Law” CLE cosponsored by the Southern Food and Beverage Museum and Tulane University School of Law, where the authors of this article first discussed this subject publicly<sup>416</sup>—are also increasingly common.

### *B. Comparative Summary of Data on Key Criteria*

Though just now approaching its tenth anniversary as a field, FL&P compares very favorably to the longer-established fields of FDA Law and Ag Law in terms of meeting the important criteria we have identified. The following table summarizes and compares the three fields using the ten criteria we employed above.

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409. *Environmental Law Review's Annual Symposium*, FORDHAM ENVTL. L. ADVOC. (Mar. 2, 2011, 6:29 AM), <https://sites.google.com/site/environmentallawadvocates/news-and-announcements/environmentallawreviewsannualsymposium>.

410. Aaron Waites, *Food Fight! Legal Symposium Coming Up November 4th*, CHAPMAN U. SCH. L. (Oct. 21, 2011), <http://www.lawschoolblog.org/food-fight-legal-symposium-coming-up-november-4th/>.

411. *Food Justice*, U. OR., <http://foodjusticeconference.com/index.htm> (last visited Oct. 13, 2013).

412. *From Seed to Stomach: Food and Agricultural Law*, NORTHEASTERN U. L.J. SYMP., <http://nulj.org/food> (last visited Oct. 13, 2013).

413. *Food Law Colloquium*, ME. L. REV. (June 11, 2013), <http://www.mainerlawreview.com/?cat=4>.

414. *Conference on Agriculture and Food Systems*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/Environmental\\_Law\\_Center/Institutes\\_and\\_Initiatives/Events/Conference\\_on\\_Agriculture\\_and\\_Food\\_Systems.htm](http://www.vermontlaw.edu/Academics/Environmental_Law_Center/Institutes_and_Initiatives/Events/Conference_on_Agriculture_and_Food_Systems.htm) (last visited Oct. 9, 2013).

415. Symposium, *Safety and Sustainability in the Era of Food Systems: Reaching a More Integrated Approach*, 2014 WIS. L. REV. 199.

416. See *supra* notes \*\*\*, 3 and accompanying text.

TABLE 7: COMPARATIVE SUMMARY OF TEN KEY CRITERIA

Academic Category	FDA Law <sup>417</sup>	Ag Law <sup>418</sup>	FL&P <sup>419</sup>
Academic Scholarship	Yes	Yes	Yes
Law School Courses	Yes	Yes	Yes
Degree Programs	No	Yes	No
Academic Centers	No	Yes	Yes
Casebooks and Other Texts	Yes	Yes	No
Dedicated Legal Journals	Yes	Yes	Yes
Clinical/Experiential Education	No	Yes	Yes
Student Societies	Yes <sup>420</sup>	Yes <sup>421</sup>	Yes
Professional Associations/Bar Groups	Yes	Yes	No
Academic Conferences	Yes	Yes	Yes
<b>Totals</b>	<b>7/10</b>	<b>10/10</b>	<b>7/10</b>

The table demonstrates that FDA Law, Ag Law, and FL&P each have records of scholarship, law school courses, dedicated legal journals, student societies, and academic conferences. Ag Law meets each of our ten criteria, while both FDA Law and FL&P fulfill seven of the ten criteria.

In just its first decade, FL&P has evidenced exceptional growth as a field. Law schools, legal faculty, and law students alike have demonstrated a strong and growing interest in and commitment to this area of law. Without question, FL&P is “an important part of the education and training of law students.”<sup>422</sup> By these metrics, the present state of the growing field of FL&P is strong.

### C. FL&P's Next Five Years

The dramatic advances in the field of FL&P are evident. But the field still has many unmet needs and much room to grow. During the

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417. See generally Part II.A.

418. See generally Part II.B.

419. See generally Part III.A.

420. See, e.g., *The Food and Drug Law Association*, WIDENER L., <http://law.widener.edu/CampusLife/ActivitiesandOrganizations/OtherDelawareOrganizations/FDLA.aspx> (last visited Dec. 18, 2013).

421. See, e.g., *Agricultural Law Society*, PENN ST. L., [http://law.psu.edu/current\\_students/student\\_organizations/agricultural\\_law\\_society](http://law.psu.edu/current_students/student_organizations/agricultural_law_society) (last visited Dec. 18, 2013).

422. Hamilton, *Study of Agricultural Law*, *supra* note 10, at 516.



next five years, the field would benefit from advancements in a number of important areas.

Though FL&P scholarship and law school courses have increased considerably in recent years, these two vital areas can always benefit from more attention. More interdisciplinary and multidisciplinary scholarship in underserved FL&P areas like constitutional law, state and local government regulations, and intersections with fields such as public policy or hospitality would be of particular benefit to the field. FL&P courses, though already increasingly plentiful, might spread further and faster in some cases if courses were to be offered jointly to law students (J.D. and LL.M.) and to graduate students in fields like public health or food studies who are interested in FL&P issues. For example, in the spring of 2013, Harvard offered an FL&P course to law students and public health students, which was co-taught by faculty from the university's law school and public health school.<sup>423</sup>

As we have shown, FL&P also lacks a dedicated degree program. Arkansas's LL.M. Program in Agricultural and Food Law has taken steps in that direction and may soon fill that void. An LL.M. degree program in FL&P would greatly benefit the development of the field. The publication of one or two textbooks targeting the law school audience would also prove a valuable tool. As we described previously, FL&P does not so much require a casebook as it does at least one substantial textbook that focuses on many of the key issues of significance in the field.

The establishment of a national membership association along the lines of an "American Food Law & Policy Association" to fill some of the same roles as do the AALA and FDLI is a necessary development for helping foster scholars, scholarship, and collegiality even further. Finally, listing of the field as a distinct subject in the AALS's annual directory of law faculty, along with the establishment of state and national bar committees and sections specifically focusing on FL&P, would be capstone achievements for the field.

#### CONCLUSION

While its roots lie in FDA Law and Ag Law, the growing field of Food Law & Policy celebrates its tenth year as a distinct legal field in 2014. In its first decade, FL&P has proven to be a timely and vibrant addition to the legal academy. Already, FL&P scholars have authored hundreds of articles in the field; launched dedicated FL&P clinics,

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423. *Legal and Public Health Perspectives on Food Policy*, HARV. L. SCH., <http://law.harvard.edu/academics/curriculum/catalog/index.html?o=64968> (last visited Dec. 31, 2013).

centers, and journals; and hosted numerous conferences and symposia. FL&P students have formed student societies and taken part in a number of clinical opportunities around the country.

FL&P will continue to draw the attention of legal scholars and law students for generations to come. The field allows opportunities for law students to consider timely issues and take part in cutting-edge debates, scholarship, and actions. FL&P also bridges studies in multiple areas of law and across law and a range of other disciplines.<sup>424</sup>

The past, present, and future of FL&P demonstrate the great need for law schools and scholars to continue to grow the field through the creation of new courses, research, publications, centers, programs, and additional opportunities for student engagement and education about the myriad laws and policies impacting our food system.<sup>425</sup>

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424. Further, the growing interest in FL&P from the international community and the benefits of a global perspective ensure countless future opportunities for growth in terms of study, scholarship, and practice.

425. See Hutt, *Food Law & Policy*, *supra* note 1, at 11.