

Legal Institutions for Rural Economic Development

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I. Introduction

- a. Importance of rural life
 - i. Thomas Jefferson, *Notes on The State of Virginia* (1785)
 - ii. Theodore Roosevelt, Preface, *Report on the Country Life Commission* (1909)
 - iii. George W. Bush

II. The changing nature of rural America and its economy

- a. **The worldwide emptying out of rural places**
 - i. In 2008, the world population reached a milestone when, for the first time in history, more than half of the world's population lived in urban areas
 - ii. Major reason for urbanization is individuals seek out urban areas for perceived better opportunities and developing countries encourage urbanization to grow a consumer base for industrialization.
- b. **The American emptying out of rural places**
 - i. U.S., as well as other developed countries, largely urbanized in the twentieth century. In 1910, just forty-six percent of the U.S. population lived in urban areas; by 2010, more than eighty-one percent did so.
 - ii. American migration to urban areas in the mid-twentieth century was similarly fueled by low farm income and perceived better opportunities in industry, trade, or service sectors.
- c. **Non-farm rural population has steadied while agricultural population has dramatically decreased**
 - i. Nonfarm rural population has held steady through most of the twentieth century: in 1900, the nonfarm rural population share was 23%; in 2000, the rural nonfarm share was nearly 20%.
 - ii. On the other hand, a major transformation in agriculture fueled by labor-saving technological progress and reduction in transport costs dramatically reduced the number of rural people in the U.S. involved in agricultural production throughout the twentieth century.
- d. **Today's rural economies are extremely diverse**
 - i. Today's rural economies are exceedingly diverse in both economic activity and employment. A 2005 USDA typology of nonmetropolitan counties' economies found that 585 are manufacturing dependent; 403 are farming dependent; 222 are government dependent; 114 are services dependent; 113 are mining dependent; and 615 are nonspecialized nonmetropolitan counties.

- e. **Rural economies are interdependent with local urban economies**
 - i. Because of the diversity of the nonfarm rural economic activity, as well as the reliance of farm households on off-farm activity, the economic vitality of rural communities now depends not only on agriculture, but on the health of the non-farm economy accessible to rural communities.
 - ii. This blurring of rural and urban economies is also reflective of the sprawling nature of cities, as well. American suburbs and exurbs now cover more than fifteen times the land area of U.S. urban areas. The size of such suburbs and exurbs has increased fivefold in size between 1950 and 2000. As a result, there is no stark distinction between urban and rural in the American landscape; instead, development is increasingly strung out development along all points of the urban and rural continuum. So, too, are rural economies.
 - f. **Rural economies face global market pressures and have global opportunities**
 - i. In 2013, U.S. farm production had fifth straight record year for exports.
 - ii. On the other hand, U.S. farms face global competition in an age when transportation costs are negligible.
- III. Legal institutions for rural economic development**
- a. **Beyond federal rural economic development focusing on agriculture**
 - i. For most of the twentieth century, rural economic policy was federal, and it centered on the farm.
 - ii. While there is a turn away from centralized ag-based RED policies, there is less agreement on what else rural economic development policies might be or even what the objective of rural development policies should be.
 - b. **Rural economic development and individual migration options**
 - i. If the goal of economic development is to improve opportunities for individuals, and if individuals migrating to urban areas almost always see improvements in income in that urbanization decision, it is difficult to understand why economic development programs should seek to promote economic development in rural areas that lessen access to urban areas.
 - ii. Cities collectively produce seventy percent of the world's gross domestic product (GDP), and in the U.S., the one hundred most populous metropolitan areas contribute seventy-five percent of America's GDP.
 - c. **Spatially-neutral policies are unlikely to predominate in rural economic development**
 - i. The impetus to try to improve the rural economy is unlikely to disappear any time soon.
 - ii. Those with less education are more "stuck" in rural areas than those with higher educational attainment.
 - iii. In addition, there are several locations where rural economies are booming. Economists note that the modern determinants of rural development in the U.S. are (i) the negative externalities of urban

congestion; (ii) high costs of urban space; and (iii) attractive rural amenities.

- iv. Because of the gerrymandered nature of political representation in state politics, rural areas routinely maintain an outsized political weight in excess of their population or economic heft.

IV. “Bottom up” planning mandates for rural economic development

- i. “Place-based” policies have found six commonly recognized pitfalls and shortcomings of place-based policies, which are that they may: (i) generate nothing but rents for the owners (potentially absentee) of property in targeted places, (ii) attract or retain (trap) poor people in poor areas, (iii) distort business as well as human migration decisions, (iv) enable the postponement of necessary adjustments, (v) create dependencies, and are (vi) subject to abuse by place-based politicians.
- ii. To leverage the development of potentially sustainable rural communities economists recommend the use of place-tailored matching funding rather than place-based categorical funding.
- iii. Put simply, there is no economic development policy for “rural America” conceived of as a unified place. Instead, there are only economic development policies for specific rural places

b. Rural economic development as part of comprehensive planning

- i. The new wave of rural economic development policy making instead focuses upon “bottom up” decisionmaking in which local rural communities play a role in deciding the economic policies that govern the local communities futures. While such visioning of futures is possible on an ad hoc basis, it is much more powerful when given a basic structure and the resources to fully evaluate those futures.
- ii. An economic development element is required as part of comprehensive planning documents in Washington State; Oregon; Delaware; Washington, D.C.; Georgia; and Rhode Island.

c. State mandated and funded economic development planning outside of the comprehensive planning process

- i. Colorado’s Blueprint “bottom up” approach to economic development engaged thousands of rural people in devising regional rural economic development action plans specific to that particular region.

V. Redefining plans, zoning, and other codes to reflect non-agricultural economic production and regional rural values

- a. One growth area for agriculture is at the rural-urban interface where farmers are increasingly finding ways to supplement agricultural production with ancillary on-farm income. Local governments should embrace revision of plans, zoning and other codes to facilitate such additional uses and income streams in agricultural areas to the extent that it reflect regional rural values and, where relevant, statewide or national rural values.
 - i. Agritourism

1. The growth of “farm-to-table” dinners in rural environs and other “back-to-the-farm” experiences for urbanites is increasingly challenging agricultural plans, zoning, and other codes. See *Shore v. Maple Lane Farms* (Tenn. 2013) and *Greenfield v. Multnomah County* (Oreg. 2013)
- ii. Alternative energy development
 1. See examples of wind development in eastern Idaho, where there is increasing efforts among farmers to get into wind energy development but facing local opposition.
 2. Similar to fracking.
- iii. The importance of providing alternative revenue streams to farmers must be balanced against the local rural heritage and the community’s vision for itself. In certain locations, there may be statewide, or even national concern.

b. Identifying, evaluating and disclosing risks of government involvement in rural economic development

- i. Most substantial rural economic development will require government subsidies or assistance to be viable. Few rural areas are equipped to represent themselves adequately in major negotiations. As a result, states should mandate requirements by which access to tools of rural economic development require the identification, evaluation and disclosure of risk to government entities in rural economic development activities.
 1. Teton County, Idaho. Failed to properly protect itself in numerous development agreements signed over a decade. The result is that the county is still liable for tens of millions of dollars of infrastructural improvements feeding “zombie” subdivisions. A statewide development agreement law could have ensured that Teton County had basic contractual provision in place—e.g., phasing, entitlement expiration dates—that would have prevented such a dilemma.
 2. Chobani development agreement with Twin Falls, Idaho. The State assisted a local government with significant infrastructural investment in one of the largest yogurt factories in the world with a company that is just five years old. Most of the risk is borne by the local government and the State. In addition, there have been substantial environmental complaints resulting from the site that were not evident at the time of signing.
- ii. Examples illustrate that while local government should maintain control over its economic development activities in rural areas, state laws that enforce good habits in economic development can ensure that local areas make the best use of their finite local resources and disclose to the community the potential risks of a project.

VI. Several other ideas for rural economic development

- a. Increase access to financial markets through funding structures that focus on low income rural economic development areas. See the work of the Montana Community Development Corporation in rural Montana and Idaho.
- b. Fund legal resources to assist rural areas. See example of the University of Idaho College of Law's Economic Development Clinic.
- c. Invest in state legal or planning offices that can provide models guides, treatises, and training to rural areas. See California Continuing Education of the Bar; UI College of Law Economic Development Clinic.
- d. Assist both farmers and other rural industries in accessing foreign markets. See local office of the U.S. Commercial Service of the U.S. Department of Commerce.
- e. Become the kind of place that people with education want to be. The future of wealth generation is tied to an educated workforce. Education is mobility. A local place—urban or rural—best improves its economic chances the more it is attractive to people with educations.