

ENVIRONMENTAL
LAW

BOOK SECTION

THE CONSERVATION OF LOCAL AUTONOMY:

California's Agricultural Land Policies, 1900–1966

REBECCA CONARD

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FOREWORD

W. ELLIOT BROWNLEE*

Earlier this year Selma Moidel Smith, the editor-in-chief of *California Legal History*, contacted me to let me know that she wished to publish Professor Rebecca Conard's 1984 Ph.D. dissertation, "The Conservation of Local Autonomy: California's Agricultural Land Policies 1900–1966," in *California Legal History*. Ms. Smith had discovered that I had been the chair of Conard's Ph.D. committee in the Department of History at the University of California, Santa Barbara and asked for my assistance in locating her. I was delighted by the news. The dissertation was superb, and even in 1984 I knew that it should be published.

Let me explain a few things about the dissertation and the career of Rebecca Conard.

She entered the Graduate Program in Public Historical Studies as one of its first Ph.D. candidates. Previously, she had been an English major at California State Polytechnic University, Pomona, received an M.A. in Folklore at the University of California, Los Angeles, taught in the English Department at American River College in Sacramento, and completed a very large oral history project on "Century Farm" families for the State

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Historical Society of Iowa. She arrived at UC Santa Barbara with a strong interest in the problems of farming and land stewardship.

In the Ph.D. program Rebecca built on these interests, working within our Public History program in all of its three tracks: the history of public policy, cultural resource management, and community history. But her emphasis on the public policy track, which encouraged historical research that shed light on contemporary policy issues, seemed to develop logically from her current interests. And, it promised to lead to a dissertation that would contribute equally to a career in professional practice or university research and teaching.

Early on within the public policy track, she took a course on the history of national land-use policy developed by my colleague Otis Graham. His course was stimulating but her emerging interests turned out to be more in the realm of state and local policy. During an early conversation with me regarding a dissertation that would explore some aspect of the history of agricultural land-use policies, I suggested that she think about the role of property taxation and rural zoning. I knew that these policies played significant roles in the economic development of Wisconsin, and I wondered about their importance in California.¹ I learned in that conversation that she had taken an undergraduate course in economic history in which she had become intrigued with Henry George and his single-tax ideas. This was an interest I shared, and I encouraged her to begin her dissertation exploration by studying the California setting of the single-tax movement. She began to read in the nineteenth- and twentieth-century history of state and local taxation and zoning policies, state and local politics, federalism, and economic development. Several years later she had an outstanding dissertation on the origins and enactment of the California Land Conservation Act of 1965 (commonly known as the Williamson Act), the Property Tax Assessment Reform Law of 1966, and the Open Space Conservation Amendment (adopted by California voters in 1966).

Throughout Rebecca's years in the Public History program, she continued to develop expertise not only in the history of public policy but also the full range of topics and approaches that lie within the practice of public history. Clearly, the public policy route was not likely to satisfy all of her intellectual interests within the emerging field of public history.

¹ See, for example, Vernon R. Carstensen, *Farms or Forests: Evolution of a State Land Policy for Northern Wisconsin, 1850-1932* (Madison: University of Wisconsin Press, 1958).

In 1982, two years before completing her dissertation, she joined with another Ph.D. candidate in Public History at UC Santa Barbara in founding PHR Associates, a public-history consulting firm. The combination of talent, place, and timing was ideal. The firm flourished, and Rebecca remained in private practice until 1992. Amid the excitement and demands of her entrepreneurship and pioneering in public history, including the preparation of dozens of highly professional technical reports and history publications for historic preservation projects and historic resource studies, the cost and distractions required to turn the dissertation into a book seemed daunting, and they remained so in the years to come.

Rebecca returned to full-time university life in 1992, becoming assistant professor and director of the Graduate Program in Public History at Wichita State University. At the same time, she cofounded another consulting firm, Tallgrass Historians, headquartered in her native Iowa.² By that time, she had developed a broad-gauged program of work in historic preservation, nature conservation, and community history. She was producing a stream of scholarly publications that included, in 1997, an award-winning book exploring the history of American environmentalism in the context of the history of Iowa's state parks and preserves.³ The following year she moved to the Department of History at Middle Tennessee State University. She directed its public history program until her retirement in 2016. During these years she became established as one of the most prominent international leaders of the public history movement, shaping the ideas that define the field, publishing and lecturing widely, contributing mightily to a variety of professional institutions and organizations, and winning awards. During 2002–03, she served as president of the National Council of Public History, the most important professional organization in the field.

When Selma Smith prompted Rebecca to think about publishing her dissertation, she returned to the topic of land-use planning in California. She made a few revisions, the most important of which was the reworking of the final chapter. It now includes a survey of the legislative and judicial

² To describe Rebecca as a native of Iowa is an oversimplification of a complicated and significant dimension of her life. See Rebecca Conard, "Public History and the Odyssey of a Born-Again Native," *The Annals of Iowa* 67 (Spring 2008): 165–180.

³ Rebecca Conard, *Places of Quiet Beauty: Parks, Preserves, and Environmentalism* (Iowa City: University of Iowa Press, 1997).

adjustments to the Williamson Act since 1965. But no major revisions were necessary because there has been virtually no new scholarship that would bear directly on the core narrative of the dissertation.

Back in 1984, I would not have guessed that this would be so. I assumed that the passage of California's Proposition 13 in 1978, the consideration of similar measures elsewhere, and the growing strength of anti-tax movements would stimulate substantial historical research on the structure and impact of sub-national taxation during the twentieth century. Since 1984, there has been, in fact, a surge in scholarship on the history of taxation in the United States. But the historians and other social scientists doing this work (including myself) have focused by and large on the national level. A few scholars have discussed state and local taxation perceptively and in depth, but most of them have concentrated on earlier periods.⁴ A few others have analyzed the setting and legacy of the adoption of Proposition 13 in California, and at least one study has looked closely at the intersection of state and national politics.⁵ But these scholars begin their analysis in the 1970s, and they have little to say about earlier reform movements or the impact of those movements on the taxation of the vast resources devoted to agriculture in California. As I came to discover first-hand, during the years when I served on the Assessment Appeals Board of Santa Barbara County (a board of equalization), the legislation that Rebecca analyzes enabled the creation of a massive system of classified property taxation that has survived the long-term homogenizing force of Proposition 13 on the assessment process. By 2015, at least 14.8 million acres of California's farmland were enrolled in Williamson Act contracts. This represented approximately 47 percent of California's farmland and about

⁴ The scholars who have focused on state and local taxation in earlier centuries include, for example, historian Robin Einhorn, *American Taxation, American Slavery* (Chicago: University of Chicago Press, 2016) and *Property Rules: Political Economy in Chicago, 1833–1872* (Chicago: University of Chicago Press, 2001), and economist Alan Rabushka, *Taxation in Colonial America* (Princeton and Oxford: Princeton University Press, 2008).

⁵ Leading examples of the scholarship on Proposition 13 include Isaac William Martin, *The Permanent Tax Revolt: How the Property Tax Transformed American Politics* (Stanford: Stanford University Press, 2008) and Arthur O'Sullivan, Terri A. Sexton, and Steven M. Sheffrin, *Property Tax and Tax Revolts: The Legacy of Proposition 13* (Cambridge: Cambridge University Press, 1995). On the subject of the politics of tax federalism, see Michael D. Berkman, *The State Roots of National Politics: Congress and the Tax Agenda, 1978–1986* (Pittsburgh: The University of Pittsburgh Press, 1993).

30 percent of the state's privately owned land.⁶ In other words, huge swaths of California's agricultural land still receive preferential taxation, despite Proposition 13, because of implementation of the Williamson Act.

Rebecca Conard is the first historian to explore the reasons for this outcome and to set this story within the larger history of land-use planning in California. In the process, she develops important insights into American federalism, emphasizing the potential for state-level political movements with roots at the local level to bring about significant fiscal change.

Rebecca's dissertation appears in print at a time that is quite possibly crucial for the future of the Williamson Act, as amended by the Legislature and interpreted by the courts.

On the one hand, economic pressures may significantly weaken the effectiveness of the Williamson Act structure in protecting agricultural and open land. As Rebecca has pointed out in her concluding chapter, the "Great Recession" that began in 2008 essentially ended the state subventions that had provided local governments with incentives to write Williamson Act contracts. Meanwhile, economic pressures for the expansion of the housing stock will diminish the interest of many localities in entering into contracts. For example, the demand for housing by Silicon Valley employees, coupled with the building by the California High-Speed Rail Authority of a bullet train between San Jose and Bakersfield, would encourage the kind of developmental leapfrogging in the Central Valley that the architects of the Williamson Act had hoped to discourage. Arguably, the people of California need to understand both the contributions of the Williamson Act and the economic pressures that now threaten to erode those contributions.

On the other hand, California's state government aspires to assume global leadership in environmental planning and innovation. If this impulse leads the state's political leaders or environmentalists to a wide-ranging discussion of land-use planning, Rebecca Conard's dissertation might well have a much greater impact on public policy than she hoped for in 1984.

Santa Barbara, California

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⁶ California Department of Conservation, *The California Land Conservation Act of 1965: 2016 Status Report* (Sacramento: California Department of Conservation Division of Land Resource Protection [DLRP], December 2016).

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ACKNOWLEDGMENTS

It is not often that a thirty-some-year-old dissertation catches the attention of an editor, so one can imagine my incredulity when Selma Moidel Smith contacted me a few months ago to express interest in publishing it. Thus, my thanks first to Selma for offering me the opportunity to revive a project I fully intended to see through to publication when it was fresh, and for suggesting that I look at the appellate and Supreme Court case law in updating it for publication now. Special thanks also to W. Elliot Brownlee, who served as my major professor at UC Santa Barbara, and helped Selma track me down. Having directed several dissertations myself in the intervening years, I understand the disappointment he no doubt felt when my publication plans stalled, then fell off the agenda. It was a pleasure to work with Elliot again as I revised portions of the original manuscript.

Several organizations and individuals supported this endeavor many years ago. A dissertation fellowship from the Lincoln Institute of Land Policy in Cambridge, Massachusetts, enabled me to devote the academic year 1982–1983 to research and writing. Additional financial support came from the Sourisseau Academy at San Jose State University and a Humanities

Graduate Student Research Grant from the University of California, Santa Barbara.

Peter Detwiler, then director of the Governor's Office of Planning and Research, Local Government Division, provided me with office space in 1982 while I conducted research in Sacramento. During the same period, the late Joseph A. Janelli, then director of governmental affairs, and Russell Richards, then assistant to the president, California Farm Bureau Federation, arranged my entry into the federation's private archives in Sacramento. Lucas S. Stamos, then director of the Santa Clara County Planning Department, extended a similar courtesy and allowed me unrestricted access to the materials contained in the department's library.

The UCSB Interlibrary Loan Department staff cheerfully and expertly handled continual requests for materials. John Williamson, author of the 1965 California Land Conservation Act, and several other individuals, named in the bibliography, willingly granted interviews or responded to my written queries.

A shortened version of Chapter 1 was published as "Green Gold: 1950s Greenbelt Planning in Santa Clara County, California" in *Environmental Review* 42 (1985): 5–18, and other portions were published as "Suburban Encroachment on the Old North Forty: Effective Ways to Preserve Agricultural Land" in the *American Journal of Economics and Sociology* 42 (1983): 193–208.

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INTRODUCTION

In 1953, after a half-decade of unprecedented urban growth in the San Francisco Bay Area, fruit growers and county planners in Santa Clara County joined forces to implement exclusive agricultural zoning, hoping this device would curb municipal annexations and thereby contain rampant suburban sprawl. Local action touched off a state-level political debate over agricultural land conservation, which culminated in the California Land Conservation Act of 1965, commonly known as the Williamson Act, and the Property Tax Assessment Reform Law of 1966. With this legislation, the state adopted a voluntary-participation land conservation program based on property tax incentives for agricultural landowners and, more important, reinforced a long-standing state policy of allowing local governments to oversee land-use matters.

Post-World War II urban growth precipitated the farmland conservation movement, and the environmentalism of the 1960s and 1970s helped to sustain it. Between 1956 and 1980, nearly all fifty states adopted legislation to conserve a resource once considered to be inexhaustible: farmland. State laws embody diverse strategies for conserving agricultural land: preferential property tax assessment, deferred taxation, property tax credits against income taxes, inheritance tax benefits, agricultural districting, and agricultural zoning. Land banking, development rights purchase or transfer, and conservation easements are also among the strategies, although the amount of farmland that can be conserved with these tools is quite limited.

Tax-relief strategies are by far the most common, although often they are used in conjunction with agricultural districting, agricultural zoning, and/or restrictive contracts. As of 1981, forty-eight states had adopted tax-relief laws as all or part of the effort to conserve farmland.¹ This overwhelming tendency for states to enact tax relief provisions drew criticism from many quarters because such strategies are rarely attractive to agricultural landowners situated on the urban fringe where the potential profit to be realized from eventual land conversion outweighs the short-term tax

¹ Robert E. Coughlin and John C. Keene, senior authors and editors, *National Agricultural Lands Study: The Protection of Farmland* (Washington, D.C.: Government Printing Office, 1981), 56–60.

benefits. In short, what began as a movement to conserve farmland and thereby contain urban growth became, some say, a movement to maintain the status quo in farmland property taxation.² There is a certain amount of truth to such criticism. The negotiations behind the California Land Conservation Act certainly reveal the political clout of assorted agricultural interest groups in a state where agriculture is considered an essential part of the overall economy.

This study explores the political and economic aspects of land use on the local level, then examines the emergence of the Williamson Act within the larger context of twentieth-century state policies and politics affecting privately owned agricultural land. Chapter 1, a case study of agriculture and county planning in Santa Clara County, clarifies the local circumstances precipitating state action. Chapter 2 provides an overview of nineteenth century political conditions and the establishment of home rule in the 1879 Constitution, which placed local governments in control of the general property tax system. From 1900 to 1929 (Chapters 3 and 4), the state, building on the 1879 Constitution, expanded local control over the property tax and extended local government powers to include control over land-use planning. By 1930, California had created the essential foundation on which the Williamson Act would be created.

Federal New Deal programs, World War II, and postwar growth issues prompted the state to establish a succession of state planning agencies. These activities, discussed in Chapter 5, continually reaffirmed California's commitment to strengthening local governments by vesting them with regulatory power over land-use planning matters. In Chapter 6 the focus shifts back to Santa Clara County, where agricultural land conservation advocates managed to push a greenbelt measure through the state legislature. Then, in 1957, the California Farm Bureau Federation (CFBF) lent its full support to preferential taxation for agricultural lands. For the next decade, as detailed in Chapter 7, the CFBF helped steer state legislators toward a land conservation act that fit long-established state policies. The Williamson Act of 1965 and the Property Tax Assessment Reform Law of 1966 placed agricultural land conservation within the purview of local

² See, for instance, John Brigham, "The Politics of Tax Preference" in *Property Tax Preferences for Agricultural Land*, eds. Neal A. Roberts and H. James Brown, 97-117 (Montclair, N.J.: Allenheld, Osmun for the Lincoln Institute of Land Policy, 1980).

governments. The 1966 Open Space Conservation Amendment linked agricultural land conservation with a related effort among environmentalists to preserve open space through enforceable restrictions on land use.

A broader view of the political milieu in which the California Land Conservation Act was conceived enables one to see that this law protected more than farmland and open space: it reaffirmed local control over land-use matters, at least initially. The California experience thus raises interesting questions about intergovernmental relations, and I used American federalism as an analytical framework to argue that the Williamson Act primarily conserved local autonomy in land-use decision making.

Revisiting this study gave me an opportunity to examine how the Williamson Act is holding up a half-century after its passage. On the one hand, the biennial status reports of the California Department of Conservation, which monitors the Williamson Act program, tend to underscore its long-term success at protecting the productivity of nearly half of California's agricultural lands. On the other hand, a review of the legal and legislative history pertaining to the Williamson Act since 1965 reveals a gradual shift in administrative power from the local to the state level, which affirms the validity of analyzing this still-controversial law within the scholarly apparatus of American federalism.

At one point, I considered whether the shift was great enough to require a new title. Was the Williamson Act still conserving local autonomy? The Great Recession that began in 2008 has clouded the picture. Among other things, the recession triggered new changes in public finance, and, as a result, the state no longer subsidizes the property tax relief that counties and cities extend to agricultural landowners under the Williamson Act. This change has the potential to shift administrative power back to local governments, at least to some degree. In short, the power dynamic is still in play. For this reason, I decided the title should stand because it calls attention to the core element that makes the Williamson Act an intriguing piece of legislation.

A word of caution with respect to the review of appellate and state supreme court decisions, as well as legislative actions, that have reshaped the Williamson Act since 1965, which are covered in Chapter 8. I use the term "review" because time and circumstances did not permit a thorough examination of the legislative record and the entire corpus of case law

pertaining to the Williamson Act. Of necessity, I opted for the 30,000-foot perspective; thus, I surely have missed legal decisions and legislative enactments that would add both substance and nuance to the story. Still, the aerial view yields a defensible argument, but I trust that my interpretation will be challenged by new blood in the future.

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