

TOWARDS AN INTEGRATED AGRICULTURAL AND FOOD POLICY: A ROLE FOR DIET?

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I. Introduction.....	207
II. The Food Chain and Diet.....	208
III. Two Specific Issues.....	210
IV. Conclusion.....	214

I. INTRODUCTION

Amongst the many major contributions of Neil Hamilton (Neil) to legal academia is the strong connection he has made between agricultural law and governance of the broader food chain. This particular contribution has found expression in numerous articles, including *Farms, Food, and the Future: Legal Issues and Fifteen Years of the “New Agriculture”*¹ and, more recently, *Keeping the Farm and Farmer in Food Policy and Law*.² Importantly, the development of “food democracy” is a recurring theme of his work,³ a concept once innovative, but now firmly established as a guiding regulatory principle. At the same time, he has been very much at the forefront of collating materials to guide those implementing the new forms of agriculture which he has advocated, notably *The Legal Guide for Direct Farm Marketing*.⁴

This article will address the position of agriculture, and agricultural law, within the production process “from farm to fork,” doing so through the lens of

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1. Neil D. Hamilton, Keynote Address, *Farms, Food, and the Future: Legal Issues and Fifteen Years of the “New Agriculture”*, 26 J. ENVTL. L. & LITIG. 1 (2011).

2. Neil D. Hamilton, *Keeping the Farm and Farmer in Food Policy and Law*, 11 J. FOOD L. & POL’Y 9, 12-15 (2015).

3. See, e.g., Neil D. Hamilton, Essay, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9 (2004) [hereinafter *Food Democracy*]; Neil D. Hamilton, *Food Democracy II: Revolution or Restoration?*, 1 J. FOOD L. & POL’Y 13 (2005) [hereinafter *Food Democracy II*]; Neil D. Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117 (2011) [hereinafter *Moving Toward Food Democracy*].

4. See NEIL D. HAMILTON, *THE LEGAL GUIDE FOR DIRECT FARM MARKETING* (1999). It may be mentioned the growth of farmers’ markets in the United Kingdom has in good measure been inspired by earlier experience and practice in the United States.

diet—an approach long supported by Neil. For example, in his work *Food Democracy and the Future of American Values* he asked the key question: “Is producing healthier food the missing link in the national debate about obesity and nutrition policy, and if so, how can we engage farmers in the fight?”⁵ Similarly, the role of nutrition in combating childhood obesity was central to his argument in *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*.⁶ Such sentiments are at present being canvassed more broadly and their appearance in policy documentation and academic literature will be explored before going on to consider two more specific issues: the role in this context of labelling and the introduction of incentives to steer farmers’ production decisions.

II. THE FOOD CHAIN AND DIET

Without question, there is a growing consensus that any properly functioning food chain will need to take into account the effects that it has on diet. Amongst policy documentation, this is evident in the *Communication* issued by the European Commission to instigate the next round of Common Agricultural Policy reform for the period beyond 2020.⁷ The *Communication* states, unequivocally, the Common Agricultural Policy “also has a role to play in promoting **healthier nutrition, helping to reduce** the problem of **obesity and malnutrition**, making nutritious valuable products such as fruits and vegetables easily available for [(European Union)] EU citizens.”⁸ Of special note, farmers are regarded as “the real gatekeepers of food production systems”⁹ Parallel priorities would now seem to be emerging in visions for United Kingdom agriculture post-Brexit. Thus, in his speech to the National Farmers Union Conference in February 2019, the Secretary of State for Environment, Michael Gove, affirmed, “We need to ensure that we adapt to the growing awareness, and concern, about public health. With obesity and related conditions - such as diabetes and heart disease - on the rise we need to think more about how we develop a truly healthy food economy.”¹⁰ This arguably marked an advance from earlier policy documents when there was less emphasis on nutrition, perhaps the clearest illustration of a relative silence being the *Health and Harmony* Consultation Document on the future direction for food, farming,

5. *Food Democracy*, *supra* note 3, at 29.

6. *Moving Toward Food Democracy*, *supra* note 3, at 125-26.

7. See *Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Future of Food and Farming*, at 23-24, COM (2017) 713 final (Nov. 29, 2017).

8. *Id.* at 24.

9. *Id.* at 23.

10. *A World to Win: Michael Gove’s speech to National Farmers Union*, GOV.UK: FOOD & FARMING INDUSTRY (Feb. 19, 2019), <https://perma.cc/Z9D8-TLYA>.

and the environment across the United Kingdom.¹¹

Academic literature would appear to be taking this policy imperative considerably further, with a key feature being the identification by commentators of “win-win” situations where changes in dietary preferences have positive effects not only in terms of health, but also in environmental terms.¹² Indeed, in *Food in the Anthropocene* it is declared, “Diets inextricably link human health and environmental sustainability.”¹³ The developments understood to be most beneficial for these purposes are a general shift away from such products as red meat, processed meat, and added sugar, towards vegetables, fruits, whole grains, and nuts.¹⁴ The conceptual implications of a shift of this order would be substantial: in effect, the design of agricultural production systems would be “reverse engineered” to meet the demands of a healthy “reference diet” as pre-determined. The practical implications for farmers would likewise be substantial: existing farming practices and cropping patterns would require realignment, in all probability the greatest downward pressure being exerted on dairy, beef, and sheep production, on the basis these sectors give rise to not only health risks, but also high greenhouse gas emissions through the release of methane during the digestive process.¹⁵

It would not be controversial to say that the proposed “Great Food Transformation” has attracted a level of resistance, the debate already being highly contested with regard to livestock production. In the United Kingdom, Veganuary

11. DEPARTMENT FOR ENVIRONMENT, FOOD & RURAL AFFAIRS, HEALTH AND HARMONY: THE FUTURE FOR FOOD, FARMING AND THE ENVIRONMENT IN A GREEN BREXIT, 2018, Cm. 9577 (UK); see also Michael Cardwell & Fiona Smith, *Charting a New Course for the United Kingdom Agri-Food Sector—Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit*, 89 POL. Q. 497 (2018).

12. See, e.g., Marco Springmann et al., *Health and Nutritional Aspects of Sustainable Diet Strategies and Their Association with Environmental Impacts: A Global Modelling Analysis with Country-Level Detail*, 2 LANCET PLANETARY HEALTH e451, e458-60 (2018) (later referenced as *Health and Nutritional Aspects of Sustainable Diet Strategies and Their Association with Environmental Impacts*); Walter Willett et al., *Food in the Anthropocene: The EAT-Lancet Commission on Healthy Diets from Sustainable Food Systems*, 393 LANCET 447 (2019).

13. Willett, *supra* note 12, at 447; see also, e.g., KELLY PARSONS & CORINNA HAWKES, *CONNECTING FOOD SYSTEMS FOR CO-BENEFITS* 5 (2018), <https://perma.cc/B3D6-G9QU>.

14. Willett, *supra* note 12, at 447.

15. See, e.g., J. Poore & T. Nemecek, *Reducing Food's Environmental Impacts Through Producers and Consumers*, 360 SCIENCE 987, 990-91 (2018).

(promoting veganism in January 2018) was soon followed by Februdairy (promoting the dairy sector in February 2018).¹⁶ And some of the more detailed underpinnings of such an agricultural realignment have been subject to challenge. For example, it has been maintained that prioritizing reductions in red-meat consumption over reductions in white-meat consumption would fail to give full recognition to the fact poultry competes directly with humans for grain, whereas ruminants are frequently reared on grass and arable by-products where there is no such direct competition.¹⁷ At the same time, in both the pig and poultry sectors intensive farming practices are more commonly found, which continue to attract heightened animal welfare concerns in European Union circles and beyond.¹⁸ Further, while the increased growing of nuts with high protein content may generate nutritional benefits, there may be negative environmental trade-offs in terms of demand upon freshwater resources.¹⁹

III. TWO SPECIFIC ISSUES

As highlighted, how best to engage farmers in the fight to grow healthier food is an area of inquiry to which Neil has consistently directed focus. And, in some respects, there are grounds for optimism. For example, direct marketing has seen exponential growth over the past decades: in the United States, the number of farmers' markets has increased from 1,755 in 1994 to 8,687 in 2017,²⁰ with emphasis continuing to be placed firmly on the health benefits which are conferred.²¹ On the other hand, a number of challenges remain and two specific issues may be addressed.

First, for an effective policy grounded in dietary requirements, it would seem

16. *Februdairy: The dairy industry fights back against Veganuary*, BBC: NEWSBEAT (Feb. 8, 2018), <https://perma.cc/ZEF6-679T>.

17. *EAT-Lancet report's recommendations are at odds with sustainable food production*, SUSTAINABLE FOOD TR. (Jan. 17, 2019), <https://perma.cc/P8ZX-KNUF>.

18. See, e.g., *Special Report of the European Court of Auditors on Animal Welfare in the EU: Closing the Gap Between Ambitious Goals and Practical Implementation*, at 15, No. 31/2018 (2018) ("In intensive production systems, the higher the stocking density, the higher the profits but the more difficult it is to meet specific animal needs.").

19. Willett, *supra* note 12, at 473.

20. *National Count of Farmers Market Directory Listings*, AGRIC. MARKETING SERV. (2017), <https://perma.cc/L9EZ-4RNW> (suggesting that the sector is now relatively mature, as the rate of increase has slowed more recently).

21. See, e.g., SONNY PERDUE, USDA, NATIONAL FARMERS MARKET WEEK (2018), <https://perma.cc/RW9G-PLNA> ("[F]armers and ranchers provide Americans with access to healthy foods produced locally and regionally through farmers markets, which are expanding and evolving to accommodate the demand for a diverse array of agricultural products . . .").

essential that farmers operate within a communication chain which works successfully from farm to fork, in order for health benefits generated by the primary producer to be clearly conveyed to the final consumer. More particularly, if there is to be a shift away from a response to market signals which might prompt “unhealthy production” (such as large volumes of sugar), then farmers should arguably be assisted in finding ways to unlock added value from “healthy production” (such as large volumes of nuts and legumes). In this context, a major role must inevitably fall to labelling,²² but at the same time it must also be recognized that the credence attached to nutrition and health labels has not been free from debate: even the extent to which organic food delivers nutritional benefits has been contested.²³ Nonetheless, this is also an arena where regulators enjoy considerable experience, a good illustration being the European Union food labelling regime which has included such measures as the Nutrition and Health Claims Regulation²⁴ and the Food Information Regulation.²⁵ Indeed, the latter expressly recites, “The general public has an interest in the relationship between diet and health and in the choice of an appropriate diet to suit individual needs,” with nutrition labelling being “one important method” to assist in the making of informed decisions.²⁶

While much of this regulation may tend to be of better service in assessing the nutritional and health qualities of specific products, as opposed to facilitating a balanced overall diet, it may be observed that existing governance models also extend to the provision of basic information which allow consumers to obtain “at a glance” a sense of various key nutrients’ proportions to guide their purchases. Thus, the United Kingdom’s voluntary “front of pack” nutrition labelling scheme provides details of the extent to which a portion of the food concerned goes towards meeting an adult’s daily reference intake of fat, saturates, sugars, and salt.²⁷

22. See, e.g., *Commission White Paper on A Strategy for Europe on Nutrition, Overweight and Obesity Related Health Issues*, COM (2007) 279 final (May 30, 2007).

23. See, e.g., Marcin Barański et al., *Higher Antioxidant and Lower Cadmium Concentrations and Lower Incidence of Pesticide Residues in Organically Grown Crops: A Systematic Literature Review and Meta-Analyses*, 112 BRIT. J. NUTRITION 794, 794 (2014); see also Crystal Smith-Spangler et al., *Are Organic Foods Safer or Healthier than Conventional Alternatives?: A Systematic Review*, 157 ANNALS INTERNAL MED. 348 (2012).

24. Regulation of the European Parliament and of the Council 1924/2006, 2006 O.J. (L 404) 9.

25. Regulation of the European Parliament and of the Council 1169/2011, 2011 O.J. (L 304) 18.

26. *Id.* at 19.

27. See, e.g., DEP’T OF HEALTH ET AL., GUIDE TO CREATING A FRONT OF PACK (FoP) NUTRITION LABEL FOR PRE-PACKED PRODUCTS SOLD THROUGH RETAIL OUTLETS 6 (2016), <https://perma.cc/MPN9-2QMH> (demonstrating that the scheme is understood to be compliant

This is backed up by a color coding “traffic light system” (green, amber, or red), the label making it immediately clear whether the portion falls within thresholds which are low, medium, or high.²⁸ In consequence, consumers should swiftly be able to appreciate whether their total basket of shopping takes them into “unhealthy” territory, but the scheme remains voluntary and is confined to retailers rather than extending across the complete food chain.²⁹ Moreover, there is still a lack of standardization in front of pack nutrition labelling both within the European Union and further afield.³⁰

Secondly, consideration will be required for the provision of incentives to farmers to adopt new agricultural practices, a policy lever expressly encouraged in *Food in the Anthropocene*.³¹ One of the strategies which it identifies to implement the Great Food Transformation is to “reorient agricultural priorities from producing large quantities of food to producing healthy food.”³² Actions to promote this purpose potentially include the provision of “incentives for primary producers to produce nutritious plant-based foods”³³ A hurdle to be cleared, however, will be finding incentive regimes which work well within World Trade Organization rules, since “coupled” support for a specific, albeit “healthy”, product (such as nuts) would typically fall within the “Amber Box” and count against a member’s permitted level of domestic support to farmers.³⁴ Significantly, in *United States* —

with the European Union Food Information Regulation, but this has been subject to challenge); cf. Ignacio Carreño, *The European Commission Considers the UK Traffic Light Nutrition-Labeling Scheme as Voluntary Nutritional Information and Not as a ‘Non-Beneficial’ Nutrition Claim*, 5 EUR. J. RISK REG. 61, 62 (2014).

28. DEP’T OF HEALTH, *supra* note 27, at 7.

29. See generally Caoimhín MacMaoláin, *Food Labelling Requirements in European Union Law: Creating the Right Package of Measures to Achieve the Aims of CAP 2020*, in RESEARCH HANDBOOK ON EU AGRICULTURE LAW 269 (Joseph A. McMahon & Michael N. Cardwell eds., 2015).

30. See, e.g., European Comm’n, *Minutes of the Joint Meeting on Front-of-Pack Nutrition Labelling Between Working Group of the Standing Committee on Plants, Animals, Food and Feed-Regulation (EU) No 1169/2011 on the Provision of Food Information to Consumers (FIC) & Advisory Group on the Food Chain, Animal and Plant Health* (Apr. 23, 2018), <https://perma.cc/29UL-XEKW> (indicating the range of such schemes).

31. See generally Willett, *supra* note 12, at 480; PARSONS, *supra* note 13, at 7.

32. Willett, *supra* note 12, at 480.

33. *Id.*

34. In this context, some comfort may be provided by the fact many members now notify little “Amber Box” support (since the majority is considered exempt within the “Green Box”): in the case of the European Union. See, e.g., Alan Matthews, *Recent trends in EU WTO domestic support notifications* (Oct. 5, 2018), <https://perma.cc/64ME-AZB7>; see also Agreement on Agriculture art. 6, Apr. 15, 1994, Marrakesh Agreement Establishing the World

Subsidies on Upland Cotton the Appellate Body of the World Trade Organization expressly found that, where a subsidy regime had the effect of steering the production decisions of agricultural producers away from one crop towards another by favoring the former in comparison with the latter, the payments under that regime would not be exempt within the “Green Box” from domestic support reduction commitments as “decoupled income support” under paragraph 6(b) of Annex 2.³⁵ And yet this is exactly the kind of steer which might be of advantage in an agricultural policy directed to dietary requirements: for example, providing support for legumes, but not for starchy vegetables or sugar.³⁶ It could be argued alternatively that the payments should instead be exempt as “payments under environmental programs” under paragraph 12 of the same Annex, but such environmental payments must form “part of a clearly-defined government environmental or conservation program,”³⁷ a criterion which might be difficult to satisfy if the focus is on diet as opposed to the environment. A further, and perhaps more promising, possibility would be to craft a new form of direct payment to producers with the specific purpose of meeting dietary objectives, taking advantage of paragraph 5 of Annex 2, but care would need to be taken to adhere to the precise criteria required, including the proviso, “The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.”³⁸ In consequence, more broadly, it might be suggested the presence of these barriers would indicate a need to revisit the terms of the Agreement on Agriculture so as to align them much closer with contemporary policy imperatives.

Trade Organization, Annex 1A, 1847 U.N.T.S. 410 (providing under the *de minimis* exemption in art. 6(4) that developed country members are permitted to provide product-specific domestic support of up to “5[%] of that [m]ember’s total value of production of a basic agricultural product during the relevant year . . . ,” with the threshold rising to 10% in the case of developing country members).

35. Appellate Body Report, *United States — Subsidies on Upland Cotton*, ¶ 331, WTO Doc. WT/DS267/AB/R (adopted Mar. 21, 2005) (“The flexibility to produce and receive payment for certain crops covered by a program, combined with the reduction or elimination of such payments when excluded crops are produced, creates a link with the type of production undertaken contrary to paragraph 6(b). This is so because the opportunity for farmers to receive payments for producing covered crops, while less or no such payments are made to farmers who produce excluded crops, provides an incentive to switch from producing excluded crops to producing crops eligible for payments.”).

36. See, e.g., BEN RICHARDSON & JACK WINKLER, CTR. FOR FOOD POLICY, SUGAR REDUCTION IN POST-BREXIT UK: A SUPPLY-SIDE POLICY AGENDA 18-19 (2019), <https://perma.cc/9HQE-QMZ4> (describing through sugar subsidies).

37. Agreement on Agriculture, *supra* note 34.

38. *Id.*

IV. CONCLUSION

It is now a near certainty that long term healthy diets will feature more prominently in future food and agricultural policy.³⁹ Yet all the levers necessary to achieve such prioritization remain to be fully explored, with the question posed by Neil in 2004 still very much remaining alive. Direct marketing and the endorsement of chefs (as both championed by Neil) will definitely have a role,⁴⁰ while there has been greater emphasis more recently on the importance of moving away from the routine use of antibiotics in livestock production to bear down on antimicrobial resistance and thereby improve human and animal health.⁴¹ On the other hand, there is a sense that an assessment of the complete range of complicated trade-offs to be taken into account is a work in progress. As noted, some gains in terms of diet may have a negative impact on the environment (for example, greater consumption of nuts being likely to give rise to greater use of freshwater resources); and food security concerns may also persist. Nonetheless, *Health and Nutritional Aspects of Sustainable Diet Strategies and Their Association with Environmental Impacts* suggests from its findings “a public health approach focused on dietary changes towards predominantly plant-based diets that are in line with evidence on healthy eating performs better in reducing environmental pressures, potential nutrient deficiencies, and diet-related mortality than approaches motivated only by environmental and food security concerns.”⁴² In particular, this would tend to confirm that there may be significant challenges ahead for the livestock sector, already under pressure in respect of greenhouse gas emissions.⁴³ A truly comprehensive policy may, however, need to extend further to include, by way of illustration, social policy in rural areas, where the effects of a Great Food Transformation would be even more pronounced if conversion to the production of plant-based foods is not a realistic possibility. In making such extensions, a useful point of reference might be the full range of Sustainable Development Goals.

As has been seen, law has the capacity to facilitate greater accommodation

39. See, e.g., ALISON BAILEY et al., FOOD RESEARCH COLLABORATION, DOES THE CAP STILL FIT? (2016), <https://perma.cc/UH3V-H8JM> (suggesting the option of replacing the Common Agricultural Policy by a “Common Sustainable Food Policy” or “Common Food Policy”).

40. See, e.g., *Food Democracy*, *supra* note 3, at 16; *Food Democracy II*, *supra* note 3, at 27; *Moving Toward Food Democracy*, *supra* note 3, at 120.

41. See, e.g., Thomas P. van Boeckel et al., *Global Trends in Antimicrobial Use in Food Animals*, 112 PNAS 5649, 5649 (2015).

42. Springmann, *supra* note 12, at e458-59.

43. See, e.g., TARA GARNETT ET AL., FOOD CLIMATE RESEARCH NETWORK, UNIVERSITY OF OXFORD, GRAZED AND CONFUSED? (2017), <https://perma.cc/GK7S-9WL4>.

2019]

A Role for Diet?

215

of diet within agricultural and food policy, including through labelling schemes both to inform consumer choice and to assist farmers in unlocking the added value which they have contributed through the production of nutritious and healthy food. By contrast, the existing regulatory framework may also impose constraints, with it being possible to highlight an Agreement on Agriculture which was negotiated at a time when, subject to limited exceptions,⁴⁴ food security was conceived in terms of supply and when climate change concerns remained muted.⁴⁵ Hopefully, re-orientation to a more holistic agricultural and food policy might in turn generate the impetus to kick-start the Doha Round negotiations.

44. *See, e.g.*, Agreement on Agriculture, *supra* note 34, ¶ 4 of Annex 2 (noting under the current rules, domestic food aid is only exempt from domestic support reduction commitments if “subject to clearly-defined criteria related to nutritional objectives.”).

45. *Id.*