

WHAT I LEARNED FROM NEIL HAMILTON ABOUT DEVELOPING A RESEARCH PROGRAM

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I was fortunate to meet Neil Hamilton (Neil) in 1981 when I was an LL.M. student at the University of Arkansas. I had come back to school after having clerked for a judge and was hoping to find a career other than working in a law firm. Thanks to the added LL.M. credentials, I secured a job in academia at the College of Agricultural and Environmental Sciences at the University of Georgia.

While at Arkansas Law, I was in the first group of agricultural LL.M. students and one of Neil's first students. This was a new experience for all of us. Neil had to deal with students who were already lawyers, some who had egos, experiences, and specialized knowledge about some of the issues being discussed. Jake Looney, the LL.M. Director, and Neil worked together to expose us to a wide range of topics, but we did have a good number of concerns about the topics, issues, and programming. I imagine at times Jake and Neil were quite frustrated with their new students.

The legacy of my Arkansas Law experience was exposure to current agricultural issues, the ability to secure an agricultural law teaching position, and contacts for my future career. I was also able to incorporate some of the policy issues we discussed into my research program at the University of Georgia. One of these topics covered by Neil was agricultural cooperative organizations, a form of business that had been important to my parents' farming operation. Drawing upon what I learned in the class, I decided to examine the issue of equity redemption of member securities in agricultural cooperatives for my thesis. This was a timely topic and I was able to publish an edited version as my first law review article.¹

After several years of teaching, Neil wrote that agricultural 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."² He subsequently articulated thoughts for expanding agricultural law in his 1993 seminal article titled *Feeding Our Future: Six*

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1. See Terence J. Centner, *Retained Equities of Agricultural Cooperatives and the Federal Securities Acts*, 31 U. KAN. L. REV. 245 (1983) (observing that securities regulation did not respond to the problem of delayed equity redemption).

2. See Neil D. Hamilton, *The Study of Agricultural Law in the United States: Education, Organization and Practice*, 43 ARK. L. REV. 503, 503 (1990) (highlighting agricultural law issues).

Philosophical Issues Shaping Agricultural Law.³ He related agricultural law to several policy issues including the right to farm, environmental stewardship, animal rights, and ownership of genetic resources.⁴ He later expanded his ideas with writings about food products and consumer demand.⁵

A perusal of Neil's early writings reveals an author who was choosing to go beyond customary agricultural finance, taxation, leases, and commercial law topics. Neil not only wrote to the beat of his own drum, but also thoughtfully cogitated about dozens of issues facing agriculture and rural America. Whereas many agricultural writers were providing excellent descriptions and analyses of timely issues, Neil articulated the meanings of the policy debates accompanying legislative ideas.

For me, one of the enduring lessons of Neil's exposés was that new topics continually arise that need to be considered as part of agricultural law. He expanded agricultural law to include additional topics based on their relevance in providing food, fiber, and the marketing of products. By reading Neil's policy articles, one can learn how to seize an issue, analyze it thoroughly, and offer suggestions about the merits of various options.⁶ For example, in discussing environmental policy relating to agricultural production, Neil offered advice to farmers about the future of environmental issues, and proceeded to identify three central questions that would influence the policy debate.⁷ Furthermore, he noted large-scale confined animal feeding operations would increase public scrutiny and offer "opportunities to help society develop creative alternatives that accommodate the public interest and landowners' desires."⁸

Another policy issue Neil brought to my attention was right-to-farm laws.

3. See generally Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210 (1993).

4. *Id.* at 220-57.

5. See, e.g., NEIL D. HAMILTON, THE NAT'L AGRIC. L. CTR., FARMERS' MARKETS RULES, REGULATIONS AND OPPORTUNITIES (2002), <https://perma.cc/3K6N-TAE3>.

6. See, e.g., Neil D. Hamilton, *The Role of the Law in Shaping the Future of American Agriculture*, 38 DRAKE L. REV. 573, 587 (1988-89) [hereinafter *The Role of Law in Shaping American Agriculture*] (noting that new laws, restrictions, and regulations present opportunities for agriculture); Neil D. Hamilton, *Sustainable Agriculture: The Role of the Attorney*, 20 EVNTL. L. REP. 10021, 10021 (1990) (advocating attention to sustainable agriculture).

7. Neil D. Hamilton, *Essay, Agricultural Production and Environmental Policy: How Should Producers Respond*, 1 DRAKE J. AGRIC. L. 141, 144-47 (1996) [hereinafter *Agricultural Production and Environmental Policy*].

8. *Id.* at 146.

Neil has written extensively on this topic,⁹ and explained how the coming-to-the-nuisance exception provided “an element of legal validity and equitable justification” for an exception to nuisance law.¹⁰ I analyzed the Georgia Right-to-Farm law and the legislature’s adoption of an amended Georgia law.¹¹ I noted as state legislatures deleted the equitable coming-to-the-nuisance exception incorporated in right-to-farm laws, their amended laws gave greater protection to agricultural activities.¹²

The derogation of the rights of neighboring property owners bothered some rural residents and courts. In *Bormann v. Board of Supervisors*, the Iowa Supreme Court found right-to-farm easements to be property interests and used the *per se* takings test to conclude that Iowa Code § 352.11(1)(a) constituted a taking.¹³ While Iowa attorneys judiciously demurred from commenting on this ruling, Neil’s willingness to debate controversial issues led me to critique it. I felt this ruling was wrong because nontrespassory invasions should not be evaluated under *per se* taking jurisprudence.¹⁴ Easements that are nontrespassory invasions require an ad hoc factual inquiry to determine whether the state’s action is a regulatory taking.¹⁵ When a subsequent right-to-farm challenge concerning Iowa Code § 657.11(2) was before the court in *Gacke v. Pork Xtra, L.L.C.*,¹⁶ the court retreated from its earlier

9. See, e.g., Neil D. Hamilton & David Bolte, *Nuisance Law and Livestock Production in the United States: A Fifty-State Analysis*, 10 J. AGRIC. TAX’N & L. 99 (1988); Neil D. Hamilton, *Right-to-Farm Laws Reconsidered: Ten Reasons why Legislative Efforts to Resolve Agricultural Nuisances may be Ineffective*, 3 DRAKE J. AGRIC. L. 103 (1998) [hereinafter *Right-to-Farm Laws Reconsidered*]; Neil D. Hamilton, *Right-to-Farm Laws Revisited: Judicial Consideration of Agricultural Nuisance Protections*, 14 J. AGRIC. TAX’N & L. 195 (1992).

10. *Right-to-Farm Laws Reconsidered*, *supra* note 9, at 104.

11. See GA. CODE ANN. § 41-1-7 (2018); Terence J. Centner, *Agricultural Nuisance and the Georgia Right to Farm Law*, 23 GA. ST. B.J. 19, 20 (1986) (advancing minor amendments to the Georgia right-to-farm law); Terence J. Centner, *Agricultural Nuisances Under the Amended Georgia Right-to-Farm Law*, 25 GA. ST. B.J. 36, 40 (1988) [hereinafter *Amended Georgia Right-to-Farm Law*] (inquiring whether the new right-to-farm provisions provide adequate protection for the interests of neighbors).

12. *Amended Georgia Right-to-Farm Law*, *supra* note 11. (inquiring whether the new right-to-farm provisions provide adequate protection for the interests of neighbors).

13. *Bormann v. Bd. of Supervisors*, 584 N.W.2d 309, 321 (Iowa 1998), *cert. denied sub nom. Girres v. Bormann*, 525 U.S. 1172 (1999).

14. Terence J. Centner, *Anti-Nuisance Legislation: Can the Derogation of Common-Law Nuisance be a Taking?*, 30 ENVTL. L. REP. 10253, 10260 (2000) (arguing that following the Iowa decision might emasculate other land use regulations).

15. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

16. *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 171 (Iowa 2004).

pronouncement that the provision violated the Federal Takings Clause.¹⁷ Rather, the court based its decision on the Iowa Constitution.¹⁸ Other courts have not followed this unconventional interpretation of takings jurisprudence. Yet, these two rulings reveal the danger of denigrating too many rights. Right-to-farm laws that take too many rights may result in a regulatory taking.¹⁹

At Arkansas Law, Jake Looney and Neil also introduced me to warranties of animal health and a Nebraska judicial decision finding liability for a seller's breach of an implied warranty.²⁰ Sellers of animals were alarmed to learn they were guaranteeing animal health, so they asked state legislatures to amend their commercial codes so there would be no implied warranty that cattle, hogs, or sheep are free from disease.²¹ Recalling the big-picture approach of Neil's analyses of policy issues, I looked beyond the issues advanced by interested parties to consider what would be superior for society. After conferring with an economic colleague, we realized this legislative shift of liability was economically inefficient. Due to a "moral hazard" problem, sellers are in a superior position to know their animals' health and thus, should make an implied warranty of fitness.²² My colleague and I published our economic analysis in the *American Journal of Agricultural Economics* offering policy makers a justification for adopting the warranty option fostering economic efficiency.²³

A hallmark of Neil's legislative change analyses is his suggestion for selecting superior options. I was fascinated with the Environmental Protection Agency's (EPA's) attempts to bring its water regulations governing concentrated animal

17. *Id.* at 174 (justifying not looking at the federal issue due the finding that it violated the Iowa Constitution).

18. *Id.* at 171.

19. See Terence J. Centner, *Governments and Unconstitutional Takings: When do Right-to-Farm Laws go too Far*, 33 B.C. ENVTL. AFF. L. REV. 87, 137-40 (2006) (postulating that right-to-farm laws foisting "significant burdens on neighboring property owners by providing a defense for new nuisance activities may go too far"); Terence J. Centner, *Nuisances from Animal Feeding Operations: Reconciling Agricultural Production and Neighboring Property Rights*, 11 DRAKE J. AGRIC. L. 5, 22 (2006) (opining that "if a government goes too far or takes too many rights, the action can be found to offend the takings clause").

20. *Ruskamp v. Hog Builders, Inc.*, 219 N.W.2d 750 (Neb. 1974).

21. The revised state provisions removed the former implied warranty of health for latent diseases and shifted liability for losses from sellers to buyers. See, e.g., NEB. REV. STAT. U.C.C. § 2-316(3)(d) (2018).

22. The "moral hazard" consisted of sellers lacking sufficient incentives to adopt health-protective measures for their animals since buyers would incur the costs of sick animals.

23. Terence J. Centner & Michael E. Wetzstein, *Reducing Moral Hazard Associated with Implied Warranties of Animal Health*, 69 AM. J. AGRIC. ECON. 143, 149-50 (1987) (showing how the change in liability was not advantageous).

feeding operations into compliance with the statutory provisions of the Clean Water Act.²⁴ The EPA's efforts were controversial and agricultural producers and environmental groups were at odds on how to delineate new regulations. The EPA needed regulations that complied with the law without placing excessive costs on producers of animals. Recalling Neil's advocacy of conservation practices and sustainable practices,²⁵ I waded into the debate, starting with recommendations to use conservation practices to reduce nutrient runoff associated with animal production.²⁶

Over the next decade, I evaluated the merits of various proposed and adopted regulatory provisions to inform producers, environmentalists, and the public of the policy options. Drawing upon the lessons of Neil's policy analyses, I sought to identify and enumerate the costs and benefits of the alternatives. Farm groups concerned about too much regulation and costs needed to hear about the existing unacceptable water quality issues.²⁷ Environmentalists keen to improve water quality by regulating animal waste needed to learn about the regulatory burdens and costs that would accompany the adoption of more stringent regulations.²⁸ After eighteen

24. See National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Fed. Reg. 7,176 (Feb. 12, 2003) (codified at 40 C.F.R. pts. 9, 122, 123, 412); Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines for CAFOs in Response to the Waterkeeper Decision, 73 Fed. Reg. 70,418 (Nov. 20, 2008) (codified at 40 C.F.R. 9, 122, 412).

25. *Agricultural Production and Environmental Policy*, *supra* note 7, at 142-43.

26. See generally Terence J. Centner, *Animal Feeding Operations: Encouraging Sustainable Nutrient Usage Rather than Restraining and Proscribing Activities*, 17 LAND USE POL'Y 233 (2000) (suggesting sustainability concepts and market incentives to respond to problems posed by excessive quantities of manure); Terence J. Centner, *Concentrated Feeding Operations: An Examination of Current Regulations and Suggestions for Limiting Negative Externalities*, 25 COLUM. J. ENVTL. L. 219, 250 (2000) (suggesting incentives and cost sharing programs); Terence J. Centner et al., *The Adoption of Best Management Practices to Reduce Agricultural Water Contamination*, 29 LIMNOLOGICA 366 (1999) (advocating an interdisciplinary approach to reduce agricultural pollution of surface waters).

27. See, e.g., Terence J. Centner, *Discerning Liability for Contamination by Poultry Integrators and Producers under US Federal Law*, 66 WORLD'S POULTRY SCI. J. 5 (2010); Terence J. Centner & G.L. Newton, *Meeting Environmental Requirements for the Land Application of Manure*, 86 J. ANIMAL SCI. 3228 (2008); Terence J. Centner, *Nutrient Pollution from Land Applications of Manure: Discerning a Remedy for Pollution*, 21 STAN. L. & POL'Y REV. 213 (2010).

28. See, e.g., Terence J. Centner & Jeffrey D. Mullen, *Enforce Existing Animal Feeding Operations Regulations to Reduce Pollutants*, 16 WATER RESOURCES MGMT. 133 (2002); Terence J. Centner, *Evolving Policies to Regulate Pollution from Animal Feeding Operations*, 28

years of litigation, the EPA adopted regulations complying with the law and producers recognized they needed to refrain from practices causing unacceptable water pollution.²⁹

Neil's prescient observations often addressed the changing agricultural landscape.³⁰ One of his outstanding projects was *The Legal Guide for Direct Farm Marketing*, in which he advocated selling directly to consumers and discussed the legal issues of organizing and operating a direct farm marketing business.³¹ This publication presaged the blossoming of farmers' markets in many cities: from 3,000 farmers markets in 1999 to more than 8,000 today.³² Given Neil's success with his book, I decided to write a book about animal production practices affecting the environment. I viewed the dwindling numbers of livestock in the American countryside as a symptom of a broader transformation, one with serious consequences for the rural landscape and its inhabitants. My book *Empty Pastures* was published by the University of Illinois Press in 2004.³³

Neil's evolution of ideas helped agricultural law embrace food law. Three of his research papers are prominent in discussing this expansion. The first article related agricultural production to consumers with the observation "[f]armers have to be responsive to what consumers demand."³⁴ A subsequent article recognized "the need to give consumers more information about how food is produced and more choices for how to acquire it."³⁵ In an article discussing the use of eco-labels, Neil also identified the issue of food product labeling.³⁶

ENVTL. MGMT. 599 (2001); Terence J. Centner, *New Regulations to Minimize Water Impairment from Animals Rely on Management Practices*, 30 ENV'T INT'L 539 (2004).

29. See Terence J. Centner, *Addressing Water Contamination from Concentrated Animal Feeding Operations*, 28 LAND USE POL'Y 706, 710 (2011).

30. See Neil D. Hamilton, *Preserving Farmland, Creating Farms, and Feeding Communities: Opportunities to Link Farmland Protection and Community Food Security*, 19 N. ILL. U. L. REV. 657, 657 (1999) (proposing to tie farmland preservation with farm creation and community food systems).

31. NEIL D. HAMILTON, *THE LEGAL GUIDE FOR DIRECT FARM MARKETING* 3-4 (1999).

32. Amy Leibrock, *Good Growth: Farmers Markets Still on the Rise*, SUSTAINABLE AM.; FOOD SYS. (Aug. 6, 2014), <https://perma.cc/KC7W-CPX6>.

33. TERENCE J. CENTNER, *EMPTY PASTURES* 189 (2004).

34. Neil D. Hamilton, *Agriculture Without Farmers? Is Industrialization Restructuring American Food Production and Threatening the Future of Sustainable Agriculture?*, 14 N. ILL. U.L. REV. 613, 657 (1994).

35. Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 DRAKE J. AGRIC. L. 7, 25 (1996).

36. See 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 (2002).

Neil's writings on consumer demand were of great interest to me because, as a lawyer in an applied economics department, I was expected to have a research program with an economic component. I sought to expand Neil's scholarship on food product differentiation connected with higher prices by identifying product labeling opportunities. Looking to apply my knowledge to Georgia, I learned about problems accompanying the marketing of Georgia's Vidalia onions. Vidalias are a specialty crop selling for a price premium due to their mildness and great taste.³⁷ In the mid-1980s, problems with non-Vidalia onions being labeled and sold as Vidalia onions threatened to ruin their reputation.³⁸ The viability of the industry was at risk due to inferior mislabeled onions. Georgia needed a legal mechanism to prosecute sellers of mislabeled onions sold in other states.³⁹

How could Vidalia onions qualify for trademark protection? They were grown by more than 200 producers so Vidalia onions could not qualify for a trademark. However, I discovered an exception for products grown in a region: these products could qualify for a certification mark and secure the same protection as a trademarked product.⁴⁰ The state of Georgia had established a region for Vidalia onion production, so what was needed was a group that would exercise legitimate control over the use of a Vidalia onion certification mark.⁴¹ After making this suggestion, the Georgia Department of Agriculture applied for and was successful in having "Vidalia" registered as a certification mark by the United States Patent and Trademark Office.⁴² Georgia's onion producers now had a federal legal enforcement mechanism against mislabeled onions being sold in other states.

Neil subsequently identified a post-industrial food democracy period with the greater use of labeling information for numerous food products.⁴³ Neil's ruminations on labels inspired me to write a number of articles on food labeling; including organic certification, eco-labeling, rBST, beta agonists, and antibiotics.⁴⁴

37. Terence J. Centner et al., *Product Differentiation Protection: Developing a Strategy for Multiple Producers of Regional Specialty Crops*, J. FOOD DISTRIBUTION RES., Sept. 1989, at 13, 14 [hereinafter *Product Differentiation Protection*].

38. TERENCE J. CENTNER & JOHN T. BRYAN, LEGISLATION AFFECTING THE PRODUCTION AND MARKETING OF GEORGIA'S VIDALIA ONIONS 1 (1988).

39. See Terence J. Centner, *Trademark Law for Specialty Fruits and Vegetables*, 10 J. AGRIC. TAX'N L. 3 (1988).

40. CENTNER & BRYAN, *supra* note 38, at 9.

41. *Product Differentiation Protection*, *supra* note 37, at 17.

42. VIDALIA, Registration No. 1,709,019.

43. Neil D. Hamilton, *Harvesting the Law: Personal Reflections on Thirty Years of Change in Agricultural Legislation*, 46 CREIGHTON L. REV. 563, 565, 569 (2012) (reflecting on experiences teaching agricultural law to discern "what works, what does not, and why").

44. See, e.g., Terence J. Centner et al., *Beta Agonists in Livestock Feed: Status, Health*

Our research on truthful labeling continues to garner interest as consumers seek non-genetically modified food products and definitions for terms such as “milk” and “meat.”⁴⁵

Another issue Neil has addressed is animal welfare and the challenges of structuring animal production practices responding to consumer concerns.⁴⁶ He judiciously noted food and agriculture policy debates require information of how things really work.⁴⁷ Following this suggestion, I decided that someone needed to meaningfully relate animal production with consumers’ preferences for meat and animal products, and this accounting needed to include the producer’s side of the story. My descriptions of consumer information on production and marketing practices are set forth in twenty chapters of a new book titled *Consumers, Meat and Animal Products*, recently published as part of Routledge’s Earthscan Food and Agriculture Series.⁴⁸

In conclusion, Neil’s ideas and scholarship have been important to the development of agricultural law and in the very shaping of my research program. He embraced a wide range of policy issues that are integral to the production of safe and healthy food. At Drake Law, he was an influential teacher who was able to help guide hundreds of students to meaningful endeavors in agricultural law. I will miss Neil’s instructive analyses of contemporary agricultural issues.

Concerns, and International Trade, 92 J. ANIMAL SCI. 4234 (2014); Terence J. Centner, *Efforts to Slacken Antibiotic Resistance: Labeling Meat Products from Animals Raised Without Antibiotics in the United States*, 563-64 SCI. TOTAL ENV’T 1088 (2016); Terence J. Centner & Kyle W. Lathrop, *Legislative and Legal Restrictions on Labeling Information Regarding the use of Recombinant Bovine Somatotropin*, 80 J. DAIRY SCI. 215 (1997); Terence J. Centner, *Organically-Produced Food Products: Regulations from the European Union and the United States Set the Stage for Imports*, J. INT’L FOOD & AGRIBUSINESS MARKETING, Oct. 2008, at 41.

45. See, e.g., Marne Coit & Kim Bousquet, *GMO Labeling: An Emerging Food Labeling Issue*, 23 DRAKE J. AGRIC. L. 21 (2018); Marina E. Moreno & Jonathan Berman, *Can Non-dairy Beverages be Called Milk?*, SCITECH LAWYER, Winter 2019, at 24; Scott Schulman, *From Farm-to-Table to Lab-to-Table*, NAT. RESOURCES & ENV’T, Summer 2018, at 31.

46. See *The Role of Law in Shaping American Agriculture*, *supra* note 6, at 586 (noting that new laws, restrictions, and regulations present opportunities for agriculture).

47. See Neil D. Hamilton, *Keeping the Farm and Farmer in Food Policy and Law*, 11 J. FOOD L. & POL’Y 9, 12 (2015) (recommending “trying to understand how the real world works”).

48. TERENCE J. CENTNER, *CONSUMERS, MEAT AND ANIMAL PRODUCTS* (2019).