

SUSTAINABLE AGRICULTURAL LAND TENURE

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I. INTRODUCTION

“Laws change; people die; the land remains.”¹ Professor Hamilton’s (Hamilton) work and writing is always cognizant of the larger picture, including recognizing the enduring nature of the land, in one state or another. Hamilton fittingly references this Abraham Lincoln quote, particular the last sentiment, in his writing on land tenure and its interaction with American agriculture. While the land remains a constant, the quote, and Hamilton’s work, also recognizes the role of individual humans, those living on, using, altering, nurturing, and, sometimes, exploiting the land.² The recognition of humanity’s impact on the land does not, of course, stop with the direct acts of tilling, planting, or grazing the land. There is also recognition of the social component, specifically, the codification of certain norms and ethics regarding the land into law. It is the interplay between the land, humanity’s use of it, our societal land ethic, and our legal system that is at the root of Professor Hamilton’s Sustainable Agricultural Land Tenure (SALT) Initiative.

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1. CARL SANDBURG, ABRAHAM LINCOLN: THE PRAIRIE YEARS & THE WAR YEARS 213 (Edward C. Goodman ed., Sterling Publ’g Co. illustrated ed. 2007) (quoting President Abraham Lincoln’s Address to Congress on Dec. 1, 1862).

2. See generally Clive Ponting, *Historical Perspectives on Sustainable Development*, ENV’T: SCI. & POL’Y FOR SUSTAINABLE DEV., Nov. 1990, at 4 (included in course materials for Prof. Hamilton’s Environmental Regulation of Agriculture class in 2009).

II. THE ROOTS OF THE SUSTAINABLE AGRICULTURAL LAND TENURE INITIATIVE

A. Land Tenure

Hamilton's writing, nearly two decades prior to the fruition of SALT as a funded initiative, recognized the relevance of land tenure on American agriculture. In *The Role of Law in Shaping the Future of American Agriculture*, Hamilton lists the legal contributions to agriculture in America, with two of the first three items on the list being components of land tenure—namely a system of property ownership and mechanisms for acquiring and transferring land title—and landlord-tenant laws allowing for the extensive use of leases.³ There have been, of course, state and federal policies with more specific land tenure objectives, including the Homestead and Morrill Acts, the President's Committee on Farm Tenancy, laws governing farm lease contracts, and legal restrictions on the ownership of farmland by corporations and non-resident aliens.⁴

While SALT was developed within the historical context of land tenure, perhaps the primary impetus, was the observation of current land tenure trends and their potential impact on sustainable agricultural practices. Such trends include the increase in the age of farmland owners, the increase of non-operator landowners living off the farm or even out of state (sometimes pejoratively referred to as "absentee owners"), a general increase in leased land, an increase in cash-rent and decrease in crop-share leases, the fractionation of land ownership with multiple heirs or beneficiaries owning land jointly, and the increase in the use of corporate entities and trusts to hold title and varying degrees of control of the land.

In relation to the interaction between land tenure and sustainable agriculture, the primary concern involves the separation of ownership and control of farmland, specifically the prevalence of leased agricultural land. The concern leased land will be farmed less sustainably than land owned by the farmer is present in contemporary sociological studies as well as historical reports and treatises.⁵ Many of the state and federal policies mentioned above are, in fact, in direct response to this concern. Such policies developed in Iowa provide an example of direct legal mechanisms used in an attempt to curtail negative effects of leased land on conservation of the soil.

3. Neil D. Hamilton, *The Role of the Law in Shaping the Future of American Agriculture*, 38 DRAKE L. REV. 573, 574 (1988-89).

4. Neil D. Hamilton, *The Role of Land Tenure in the Future of American Agriculture*, 22 DRAKE J. AGRIC. L. 349, 350-51 (2017).

5. Edward Cox, *A Lease-Based Approach to Sustainable Farming, Part 1: Farm Tenancy Trends and the Outlook for Sustainability on Rented Land*, 15 DRAKE J. AGRIC. L. 369, 370-71 (2010) (citing such sociological studies and historical reports and treatises).

B. Iowa's Duty of Stewardship

Hamilton recognized three pillars establishing a duty of stewardship for those owning and controlling Iowa's farmland.⁶ This notion of a stewardship legal duty in Iowa is an important component of our land tenure system in relation to sustainable agriculture. Such a duty is not only the potential for state action to place restrictions on the use of agricultural land based on the state's police powers, but also represents the role of public policy to respond to deleterious land tenure trends. The first pillar was established by the Iowa Supreme Court when it recognized such a duty in its 1943 ruling in *Benschoter v. Hakes*, which upholds Iowa's statute requiring landlords to give six months notice of termination of all farm leases.⁷ The Court held:

It is quite apparent that during recent years the old concept of duties and responsibilities of the owners and operators of farm land has undergone a change. Such persons, by controlling the food source of the nation, bear a certain responsibility to the general public. They possess a vital part of the national wealth, and legislation designed to stop waste and exploitation in the interest of the general public is within the sphere of the state's police power. Whether this legislation has accomplished, or will in the future accomplish, the desired result is not for this court to determine. The legislature evidently felt that unstable tenure leads to soil exploitation and waste. The amendment aims at security of tenure and it is therefore within the police power of the state.⁸

The Court asserts owners and operators of Iowa's land "bear a certain responsibility," or essentially owe a duty to the general public, declaring efforts to stop waste of Iowa's soil to fall within the state's police power.⁹

Second, the Iowa legislature—in establishing Soil and Water Conservation Districts¹⁰ and, in turn, soil loss limits—specifically addressed the duty of landowners to protect Iowa's land:

To conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is

6. Neil D. Hamilton, *Feeding Our Green Future: Legal Responsibilities and Sustainable Agricultural Land Tenure*, 13 DRAKE J. AGRIC. L. 377, 389-90 (2008).

7. *Benschoter v. Hakes*, 8 N.W.2d 481, 485-87 (Iowa 1943) (describing that Iowa's lease termination statute was implemented in response to dustbowl and depression era concerns about the detrimental effects of tenure insecurity on soil conservation).

8. *Id.* at 487.

9. *Id.*

10. IOWA CODE § 161A.43 (2018).

hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil and water conservation districts.¹¹

Here, the Legislature specifically addresses the “value of the soil” and “the injurious effects of soil erosion.”¹²

Finally, in upholding State’s soil loss limits, the Iowa Supreme Court again addressed the duty of stewardship for landowners, holding:

It should take no extended discussion to demonstrate that agriculture is important to the welfare and prosperity of this state. It has been judicially recognized as our leading industry. The state has a vital interest in protecting its soil as the greatest of its natural resources, and it has the right to do so.¹³

The establishment of Soil and Water Conservation Districts and the ruling upholding its constitutionality directly address conservation of Iowa’s soil as an asset while the farm tenancy statute affects conservation indirectly by increasing land tenure security for tenant farmers.

C. Linking Land Tenure and Sustainable Agriculture

The article, *Feeding Our Green Future: Legal Responsibilities and Sustainable Agricultural Land Tenure*, kicked off the SALT Initiative and provides a straight-forward introduction to the connection between land tenure and sustainable agriculture. Hamilton states:

Sustainable agriculture is essentially a promise to future generations to protect our capacity to produce and thrive. To consider sustainable agriculture is to consider land tenure. Issues of how agriculture will take advantage of the opportunities connected with the “green sustainable future” and how well agriculture is able to perform and protect the natural resources comprising it are fundamentally linked to who owns the land and how the benefits and responsibilities of land use are shared.¹⁴

As discussed previously, this fundamental link between the continued productivity of the land with the rights and responsibilities of land ownership and control dates back hundreds, if not thousands of years. Hamilton’s SALT project,

11. *Id.*

12. *Id.*

13. Woodbury Cty. Soil Conservation Dist. v. Ortnier, 279 N.W.2d 276, 278 (Iowa 1979) (citation omitted).

14. Hamilton, *supra* note 6, at 384.

however, expanded the scope of analysis of land tenure to include the effect of contemporary issues—such as eco-system service contracts, wind energy development, manure agreements, and conservation easements—while at the same time focusing on specific public policies and private contractual arrangements as tools for increasing sustainable agricultural practices in the face of challenging land tenure trends.¹⁵

III. THE FRUITS OF THE SUSTAINABLE AGRICULTURAL LAND TENURE INITIATIVE

The Leopold Center for Sustainable Agriculture at Iowa State University partnered with Drake University Law School's Agricultural Law Center and provided funding for SALT research and outreach. Based on Hamilton's description of sustainable agriculture as "a promise to future generations to protect our capacity to produce and thrive,"¹⁶ SALT focused on soil health and conservation but also recognized and addressed larger environmental issues, the need for stable rural communities, and retention and recruitment of a new generation of farmers in order to preserve and promote our productive capacity.

Sustainable Agriculture's promise to future generations certainly requires abundant, healthy soil. Again, the main thrust of SALT was aimed at keeping soil in place and productive. There are several mechanisms within the umbrella of land tenure that play a role in soil conservation. Including, the mandatory regulations found in soil loss limits and laws providing increased tenure security for tenant farmers that make up the duty of stewardship discussed previously, but also private arrangements such as eco-system service contracts, conservation and agricultural easements, farm leases, as well as the rules established in the bylaws and trust instruments for the growing number of corporations and trusts that own and manage farmland. Based on the substantial number of acres of farmland under a lease contract and the potential to curb potentially dubious land tenure trends, the primary component of SALT consisted of research and outreach regarding farm leases that promote sustainable agricultural practices.

SALT produced multiple journal articles, guides for farmers and landowners, online publications, video resources, and webinars and seminars reaching tens of thousands of farmers and landowners on the topic of sustainable agricultural land tenure. Many of these resources are available through the Drake University Agricultural Law Center and the Leopold Center for Sustainable Agriculture.¹⁷ It

15. *Id.* at 384-86.

16. *Id.* at 384.

17. See generally *Agricultural Law Center*, DRAKE U.L. SCH., <https://perma.cc/MM74-LYNA> (archived Sept. 26, 2019); *Videos*, LEOPOLD CTR. FOR SUSTAINABLE AGRIC., <https://perma.cc/G2HD-8ADP> (archived Sept. 26, 2019).

would be redundant and too lengthy to attempt to include all of the findings, recommendations, examples, and other information in this article, but perhaps most noteworthy is the reporting of twenty landlords or tenants who entered conservation-based leases on 2,290 acres of farmland.¹⁸ The impact of SALT on farm leases likely goes far beyond this number due to inability to track all online visitors and others. In addition, the resources were shared with partners with similar interests and missions across the country and continue to be used in outreach to farmers and landowners. Finally, SALT has had a continuing impact on the advisors of those who own and operate our country's farmland, be they attorneys or other professionals using the resources to assist clients in understanding their options concerning the land and to implement practices to fulfill the promise of sustainable agriculture.

18. NEIL HAMILTON & EDWARD COX, FUNDING IMPACT BRIEF #7: SUSTAINABLE AGRICULTURAL LAND TENURE (SALT) 1 (2014), <https://perma.cc/N3GY-7WPV>.