

HOW DEMOCRATIC IS OUR FOOD SYSTEM? BRIEF REFLECTIONS ON THE STATE OF FOOD DEMOCRACY IN THE UNITED STATES

Kelly Nuckolls[†]

*Sustainability is not something somebody else does for us—it is something we choose in the decisions we make and the foods we eat.*¹ - Neil Hamilton

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[†] Policy Specialist with the National Sustainable Agricultural Coalition and an Adjunct Professor at George Mason Law School teaching Food Law and Policy. LL.M., Food and Agricultural Law, University of Arkansas School of Law 2017; J.D., Drake University Law School 2016; B.A., Political Science, Fort Hays State University 2013. Thank you to Professor Neil Hamilton for introducing me to the concept of food democracy and teaching me about the importance of a more democratic food system. The lessons you taught me have been invaluable—from building my skills and knowledge around how to be an advocate in this complex food system to emphasizing the necessity of a creative article title that captivates readers. Your teachings have been life changing—not only in my career, but in the personal choices I make each day. These lessons brought about my love and passion for food, food that I no longer take for granted.

1. Neil Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117, 145 (2011) [hereinafter *Moving Toward Food Democracy*].

I. INTRODUCTION

Fifteen years is a short amount of time for an entire system to not only become more democratic, but also more equitable and sustainable. The history of the United States' government proves this—its political system has evolved over almost 250 years, but has still failed to include participation from all,² access for all,³ and equity for all.⁴ The United States food system is no different. The lack of participation,⁵ access,⁶ and equity⁷ in the food system is proof that a shift towards food democracy is not a sprint, but a marathon, with miles and miles to go.

In reflecting upon the facets of United States democracy and its impact on our food system over the past fifteen years, a few key things come to mind. In fifteen years, three different presidents and three different farm bills impacted our food system and the food democracy movement.⁸ Court decisions also shifted the law around our food system.⁹ New laws and policies will continue to shape the

2. See U.S. CENSUS BUREAU, REPORTED VOTING AND REGISTRATION, BY SEX AND SINGLE YEARS OF AGE: NOVEMBER 2016 (2016), <https://perma.cc/3WLS-9BUR> (noting approximately 61% of the United States population voted in the 2016 national election).

3. See History.com Editors, *Voting Rights Act of 1965*, HISTORY (Nov. 9, 2009), <https://perma.cc/5HDX-EW2X> (explaining how African Americans were prevented from voting throughout United States history).

4. See *20 Facts About U.S. Inequality that Everyone Should Know*, STANFORD CTR. ON POVERTY & INEQUALITY (2011), <https://perma.cc/7QVL-EAVL> (describing numerous examples of inequality in the United States).

5. See, e.g., JAMES M. MACDONALD ET AL., USDA, THREE DECADES OF CONSOLIDATION IN U.S. AGRICULTURE 26-41 (2018), <https://perma.cc/J95T-25RE>.

6. See, e.g., *Key Statistics and Graphics*, ECON. RES. SERV., <https://perma.cc/4LFE-TCCH> (archived May 27, 2019) (highlighting the number of food insecure households in the United States).

7. See, e.g., Megan Horst, *New Research Explores the Ongoing Impact of Racism on the U.S. Farming Landscape*, CIVIL EATS (Jan. 25, 2019), <https://perma.cc/5GRF-LQ3C>.

8. See, e.g., Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 923 (2008); Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (2014); Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018); Press Release from George W. Bush, former President of the U.S., The White House, Farm Bill Veto Message (May 21, 2008) (on file at <https://perma.cc/3ZKJ-7KDL>); Helena Bottemiller Evich, *Michelle Obama sets her garden in stone*, POLITICO (Oct. 5, 2016), <https://perma.cc/CSS8-GSZP>; *Trump Caters fast food for Clemson Tigers*, CNN POLITICS (Jan. 15, 2019), <https://perma.cc/77R8-6JDT>.

9. See, e.g., POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102, 107 (2014) (noting misleading labeling claims could be a violation of the Lanham Act); Bowman v. Monsanto Co., 569 U.S. 278, 289 (2013) (concluding a farmer cannot replant patented seeds without the patent holder's permission).

concept of food democracy.¹⁰

Another key impact on food democracy was the legal scholarship of Professor Neil Hamilton (Professor Hamilton), former Director of the Drake Agricultural Law Center. Professor Hamilton first wrote about food democracy fifteen years ago, and since then, food democracy has grown and evolved. Not only through his legal scholarship and teachings, but through his advocacy¹¹ and hands-on work as a food democrat,¹² Professor Hamilton actively participated in the food democracy movement in ways that will shape the future of the United States food system.

Professor Hamilton's scholarship forces serious thought on the dilemma currently facing our food system: Whether or not an increasingly consolidated and industrialized food system continues to benefit from the laws and regulations in a way that allows the system to quash any opportunity for food democracy.¹³ The food democracy values Professor Hamilton wrote about over the past fifteen years replace the idea of a food system that produces the most food in the cheapest way possible, with a new focus on the needs of both people and our land.¹⁴

While the food democracy movement is still strong fifteen years after Professor Hamilton first wrote about the concept, upon reflection, there are still some opportunities to strengthen this movement. The purpose of this essay is to reflect upon some of the teachings and writings of a food democrat, Professor Hamilton, over the past 15 years, and use the food democracy trends within his writings to analyze the important focal areas for the future food democracy. In summarizing

10. See, e.g., 7 C.F.R. §§ 66.1-66.406 (2019) (outlining the new rule for the National Bioengineered Food Disclosure Standard, otherwise known as the "genetically modified organism (GMO) label," could have been a step toward a more democratic food system, but advocates feel the United States Department of Agriculture (USDA) failed to implement it in a way to maximize transparency and access to information); see also Press Release from Alex Formuzis, Senior Vice President of Commc'ns & Strategic Campaigns, Env'tl. Working Grp., GMOs in Many Foods Will Go Undisclosed Under Trump's Final GMO Rule (Dec. 20, 2018) (on file at <https://perma.cc/948A-97WL>) (noting the flaws with the rule that allow food products to avoid a transparent and informative label).

11. *Times May be Tough, But There's Room in the Farm Bill Tent*, NAT'L SUSTAINABLE AGRIC. COALITION (May 14, 2010), <https://perma.cc/V4T3-9KYA> (noting Professor Hamilton's testimony in front of the House Agriculture Committee advocating for government support for local and regional food systems).

12. *Directory Profile; Neil D. Hamilton*, U. ARK.; SCH. LAW, <https://perma.cc/A9DE-GZYH> (archived May 27, 2019) (describing Professor Hamilton's role in food and agriculture, including farming).

13. See Neil Hamilton, Essay, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9, 28 (2004) [hereinafter *Food Democracy*].

14. *Id.* at 16.

the works of Professor Hamilton around the concept of food democracy, four major requirements have emerged, and this essay will argue that these four requirements are still essential for the future of our food democracy, fifteen years later.

II. FOOD DEMOCRACY TRENDS IN UNITED STATES AGRICULTURAL LAW AND POLICY

A. Engagement

The first requirement for a more democratic food system is an engaged population. Professor Hamilton observed that a more democratic food system began to take shape when people started to no longer take our food system for granted and considered the impact of the food system on society as a whole.¹⁵ Once consumers, farmers, food business owners, and others started to consider their food choices and base decisions on the impact of those choices, the necessary engagement for the food democracy movement commenced.¹⁶ The lack of democracy in our food system is in part due to consumers and citizens who do not question the process of how our food is made, leaving the marketplace to assume “cheap” food is our top priority, regardless of its social, environmental, health, and other costs.¹⁷ Without the willingness to engage, there is no food democracy movement, and without broad participation, a completely democratic food system cannot exist.

B. Inclusion and Representation

The food democracy movement requires an assurance that all citizens are able to participate.¹⁸ Each person must have equal access to the same choices and the same information about their food in order for food democracy to prevail.¹⁹ Access to participation cannot be denied based on a person’s income level, race, gender, sexuality, and religion, among others.²⁰

Professor Hamilton’s scholarship forces thought beyond the traditional forms of participation in our food system. His articles require readers to ponder the

15. *Id.*

16. *Id.* at 9-10, 19; *see also* Neil Hamilton, *Food Democracy II: Revolution or Restoration?*, 1 J. FOOD L. & POL’Y 13, 31 (2005) [hereinafter *Food Democracy II*].

17. *Food Democracy*, *supra* note 13, at 10, 12.

18. *Id.* at 21.

19. *See id.* at 22.

20. *See id.* at 21-22, 30.

idea if not all “farmers, consumers, and communities have alternatives for growing, selling, and buying better foods,”²¹ then food democracy cannot be achieved. “What does it say about society if we come to the point where the measure of our food system is that cheap food is good enough for you but if you want fresher, tastier, more nutritious food you will have to pay more, probably more than you can afford?”²² Inclusion is more than the principle of ensuring everyone has enough to eat—it is making sure everyone is able to be represented by the types of food they want to eat—and that they have access to these foods.²³ Food democrats are focused on increasing “access to healthy food, building stronger communities, creating more economic opportunity, and opening more personal connections in society.”²⁴

C. Opportunity to Make a Decision

Once everyone is interested in participating and access to participation is not barred for anyone, the public needs the opportunity to choose what is grown and eaten.²⁵ In order to vote there must be options to choose from.²⁶ People participate by taking responsibility for their choices.²⁷ There must be free choice to eat a variety of foods for food democracy to prevail.²⁸

D. Increased Transparency in Our Food System

Once everyone is able to make a decision, it must be an informed decision.²⁹ In his writings, Professor Hamilton commented on how a number of citizens are unable to fully participate in the food democracy movement because of a lack of access to knowledge about who grows food, whether or not the crop was profitable, how workers growing food are treated, what products are used on food, and what practices are used to grow food.³⁰ Once consumers are adequately informed, decisions are made based on this knowledge.³¹ How the public understands and gains

21. *See id.* at 18.

22. *See id.* at 26.

23. *See id.*

24. *Id.* at 29.

25. *Food Democracy*, *supra* note 13, at 21-22; *see also* Joshua Ulan Galperin, *Value Hypocrisy and Policy Sincerity: A Food Law Case Study*, 42 VT. L. REV. 345, 358 (2017).

26. *See* Galperin, *supra* note 25; *Food Democracy*, *supra* note 13, at 21-22.

27. *Food Democracy*, *supra* note 13, at 21.

28. *See* Galperin, *supra* note 25; *Food Democracy*, *supra* note 13, at 21-22.

29. *Food Democracy*, *supra* note 13, at 21.

30. *Id.* at 27.

31. *Id.* at 19.

knowledge about our food system impacts their choices.³² “Information is the root of the movement for a food democracy.”³³

III. FIFTEEN YEARS LATER: WHERE IS THE FOOD DEMOCRACY MOVEMENT NOW?

The four trends Professor Hamilton’s scholarship focuses on are still necessary today in order for the United States to grow into a more democratic food system. Food democrats should continue to focus on these four requirements to ensure the movement continues to not only shape what we eat, “but how our economy functions, the opportunities for farmers and rural [and urban] communities, and ultimately, the safety and satisfaction of our food.”³⁴

A. *The Need for Holistic Engagement*

Recent citizen action proves the impact of an engaged population on food democracy.³⁵ Over the past fifteen years, citizens slightly shifted the United States food system. Citizen demand for local and organic food increased market opportunities throughout the food system.³⁶ Citizen driven political engagement shifted food policy in a number of areas throughout the country.³⁷ Citizen engagement significantly impacts the food system,³⁸ and increased engagement presents the

32. *Food Democracy II*, *supra* note 16, at 32.

33. *Food Democracy*, *supra* note 13, at 19.

34. *Id.* at 27.

35. See, e.g., *Moving Toward Food Democracy*, *supra* note 1, at 139-44 (recognizing the numerous consumer concerns and demands that shifted food policy in the United States); see also Mark Bittman et al., *Food and More: Expanding the Movement for the Trump Era*, CIVIL EATS (Jan. 16, 2017), <https://perma.cc/74YW-WX2E> (noting the number of food policy issues on the ballot in 2017 that prove a significant shift toward a more consumer driven food system).

36. E.g., Susan A. Schneider, *Reconnecting Consumers and Producers: On the Path Toward a Sustainable Food and Agriculture Policy*, 14 DRAKE J. AGRIC. L. 75, 84 (2009); *Farmers Markets and Direct-to-Consumer Marketing*, AGRIC. MKTG. SERV., <https://perma.cc/SEK7-W5R3> (archived May 27, 2019).

37. Hal Dardick, *Cook County soda pop tax approved with Preckwinkle breaking tie vote*, CHI. TRIB.; POLITICS (Nov. 11, 2016), <https://perma.cc/N23Y-YRNV>; Bruce Y. Lee, *5 More Locations Pass Soda Taxes: What’s Next for Big Soda?*, FORBES (Nov. 14, 2016), <https://perma.cc/3TKD-97R7>; *Massachusetts Minimum Size Requirements for Farm Animal Containment*, BALLOTPEdia (2016), <https://perma.cc/87XD-8Q8Q>; *Oklahoma Right to Farm Amendment*, BALLOTPEdia (2016), <https://perma.cc/W2SN-FF9D>; Jeanne Sahadi, *4 states just voted to hike their minimum wage*, CNN MONEY (Nov. 9, 2016), <https://perma.cc/A5R4-SBES>.

38. Schneider, *supra* note 36, at 35.

opportunity for a more democratic food system.

However, to establish true food democracy there is a need for citizen engagement around a greater number of issues impacting our food system beyond the current citizen engagement trends of shaping healthy food policy, genetically modified organisms' (GMOs) transparency, and animal welfare, among other more narrowly focused food issues.³⁹ Professor Hamilton correctly noted one barrier to a democratic food system is the fact that citizens often ignore the impact of their food choices.⁴⁰ For example, if there was more public outcry about the abuses and inequities that plague the food labor force there might be a shift in both United States laws and consumer buying power that would force the industry to change their exploitive and abusive labor practices.⁴¹ Citizen engagement is still key to the food democracy movement today.

B. Does Everyone "Have a Vote?"

There are still a number of barriers and problems food democrats must address to ensure each citizen is able to fully participate. The past fifteen years are proof that the United States food system still has major strides to make to ensure the entire population is included and represented. Communities of color are often unable to participate in our food system due to both recent examples of the discrimination and racism⁴² and our country's historical racist and inequitable practices and policies.⁴³ Income inequality and low wages prevent millions throughout the United States from fully participating in the food system at the same level of access and choice as the rest of the population.⁴⁴ There are still 40 million people

39. See Bittman, *supra* note 35.

40. *Food Democracy*, *supra* note 13, at 10, 12.

41. *See id.*

42. *Keepseagle v. Vilsack*, 102 F.Supp.3d 205, 208 (D.D.C. 2015) (depicting settlement based on USDA's racially discriminatory actions towards Native American farmers and ranchers); *Garcia v. Vilsack*, 563 F.3d 519, 520-21 (D.C. Cir. 2009) (describing lawsuit how USDA employees discriminated against Hispanic farmers and ranchers); Andrea Reusing, *Farm-To-Table May Feel Virtuous, But It's Food Labor That's Ripe For Change*, NPR; THE SALT (July 30, 2017), <https://perma.cc/Z4U4-LY8Q>.

43. E.g., Leah Douglas, *African Americans Have Lost Untold Acres of Land Over the Last Century*, NATION (June 26, 2017), <https://perma.cc/B4DH-X8AY> (discussing how the history of discrimination and racism in the United States caused black farmers' land loss); *Land Tenure Issues*, INDIAN LAND TENURE FOUND., <https://perma.cc/HR5M-MAB3> (archived May 27, 2019) (describing how United States laws since the 1880s have caused Native American's to lose over 90 million acres of land).

44. *Food Democracy*, *supra* note 13, at 10; Susan A. Schneider, *Moving in Opposite Directions? Exploring Trends in Consumer Demand and Agricultural Production*, 43 MITCHELL HAMLINE L. REV. 400, 421-24 (2017).

in the United States who often struggle to access food, period.⁴⁵ While some food democrats are fighting for equal access and participation for all,⁴⁶ more need to focus on improving this area of food democracy.

Several movements within the food system have increased the number of citizens who are able to “vote” with their forks. For example, Professor Hamilton noted how the urban agriculture movement provides additional opportunities for participation.⁴⁷ The urban agriculture movement has continued to grow, regardless of the amount of support it receives from the federal government or the general population.⁴⁸ There is no question that urban agriculture increased the number of participants in our food system over the past decade.⁴⁹ Food democrats must continue to support sectors that expand opportunities for participation.

C. How Many Choices Exist Today?

While the growth of the local and regional food, as well as the organic, sector have established more choice today,⁵⁰ there is still the same concern the agriculture and food industry is becoming increasingly consolidated.⁵¹ Professor Hamilton correctly recognized the role small scale agriculture plays in this area of food democracy.⁵² There is an opportunity to increase the number of choices throughout the food system through support of a new wave of independent business owners.⁵³

D. The Fight for Increased Transparency in Our Food System

In 2005, Professor Hamilton commented how the United States government and food industry at times prevent consumers from understanding what is in their

45. *Key Statistics and Graphics*, *supra* note 6.

46. See, e.g., Nichelle Harriott, *Breaking Barriers: Food System Diversity Begins with Farmer Diversity*, ECOWOMEN D.C. (Jan. 19, 2019), <https://perma.cc/2YDG-5AZJ>.

47. *Moving Toward Food Democracy*, *supra* note 1, at 130.

48. See Fran Howard, *Farm bill's urban farming programs fuel growing sector*, AGRI PULSE (Mar. 13, 2019), <https://www.agri-pulse.com/articles/11991-farm-bills-urban-farming-programs-fuel-growing-sector>.

49. Miguel Altieri, *How Urban Agriculture Can Improve Food Security*, CIVIL EATS (Feb. 14, 2019), <https://perma.cc/QMC5-7EHA>.

50. See, e.g., *Local and Regional Food Systems 101*, UNION CONCERNED SCIENTISTS, <https://perma.cc/9H2N-C7J7> (archived May 27, 2019).

51. *Moving Toward Food Democracy*, *supra* note 1, at 135; James M. MacDonald & Robert A. Hoppe, *Examining Consolidation in U.S. Agriculture*, ECON. RES. SERV. (Mar. 14, 2018), <https://perma.cc/3RW5-9WUC> (noting the trend within the livestock industry that shifted towards larger scale operations).

52. See *Moving Toward Food Democracy*, *supra* note 1.

53. See *id.*

food and how their food is produced.⁵⁴ The current theme throughout the food system that “consumers can’t be trusted with information about how food is produced”⁵⁵ still reigns true today. Consumers continue to demand access to information about how their food is produced.⁵⁶ For example, recently consumers demanded transparency around what food products are produced with GMOs.⁵⁷ Even so, the government still refused to provide consumers with clear and complete information.⁵⁸ As a result, food democrats must continue the fight to ensure each person has access to enough information to make an informed choice about their food.

IV. CONCLUSION

What is the future of food democracy? The movement may not have made leaps and bounds of progress, but there are still signs in this Nation’s laws, marketplaces, and landscapes that it is still moving forward. In the words of Professor Hamilton, “If you think about revolutions as being quick and violent, this is not the case with Food Democracy, as the movement has grown and evolved over the last two decades.”⁵⁹ Several changes in policy and throughout the industry moved the food system forward over the past fifteen years, while “[o]ther developments have not been as positive for the values of food democracy, which illustrates how the path to justice may not always be straight or fast.”⁶⁰

54. *Food Democracy II*, *supra* note 16, at 23.

55. *Food Democracy*, *supra* note 13.

56. See, e.g., *Consumers Want Mandatory Labeling for GMO Foods*, CONSUMER REP. (Dec. 2, 2015), <https://perma.cc/5RJY-Y6PX>; Dan D’Ambrosio, *Obama signs national GMO labeling law; VT law now moot*, BURLINGTON FREE PRESS (Aug. 1, 2016), <https://perma.cc/E3YT-E966>; see generally Vt. Stat. Ann. tit. 9, §§ 3041-48 (2018).

57. See, e.g., Vt. Stat. Ann. tit. 9, §§ 3041-48 (2018); *Consumers Want Mandatory Labeling for GMO Foods*, *supra* note 56.

58. See 7 U.S.C. § 1639b (2018); 7 C.F.R. §§ 66.1-66.406 (2019); Press Release from Alex Formuzis, *supra* note 10.

59. *Food Democracy II*, *supra* note 16, at 40.

60. *Moving Toward Food Democracy*, *supra* note 1, at 120.