

THE LEGACY OF PROFESSOR NEIL HAMILTON

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I. INTRODUCTION

Thank you for the opportunity to share some insights about Professor Neil Hamilton (Neil) and make the case he continues to advance food and agriculture systems even after retirement. To take a little liberty with a quote from Mark Twain the reports of Neil’s retirement are greatly exaggerated. Neil will continue to research, write, convene, mentor, and likely even get in front of a classroom—which is great news for the world of agriculture, but it is especially good news for American farmers.

I worked with Neil for twelve years, most recently as the Resilient Agriculture Coordinator. Last April I left the Drake University Agricultural Law Center (Center) to become the executive director of Iowa Interfaith Power and Light, a non-profit working with Iowans of faith and conscience to take bold and just action on climate change.

† Matt Russell is a fifth generation Iowa farmer and owns Coyote Run Farm with his husband Patrick Standley in rural Lacona, Iowa. He thanks Neil for twelve amazing years working with him at the Drake University Agricultural Law Center. Matt is the Executive Director of Iowa Interfaith Power & Light, which developed Faith Farms and Climate, a program informed and inspired by the work he did with Neil at the Center.

I am a rural sociologist and not an attorney. Thank you Neil for inviting me to join you at the Center. The twelve years working with you are the foundation for my ongoing work in agriculture and set me up for my current position. In addition to working together, Neil and I are both farm boys from southwest Iowa. My husband, Patrick Standley, and I now farm about forty miles southeast of Des Moines. So much of Neil's insights, passions, and instincts come from his love for, and understanding of, farmers. Neil always honored my farming experience and encouraged me to draw on it for my work with him at the Center.

I'm framing my talk today around what I call: Neil's Legacy, five characteristics that have made him one of the most influential professors of agricultural law in the country. He is a bold visionary, a great questioner, an eternal optimist, a big believer, and a brave crusader. To further explain this, we are going to look at Neil's insights into the pork industry using the lens of Neil's Legacy. Then we will apply Neil's Legacy to the emerging world of agricultural environmental services, especially related to climate services.

First, I want to offer a sociological take on farming in order to set up the need for the legal agreements for the agricultural environmental services that are going to be vitally important for the next agricultural revolution. Agriculture is the art and science of managing living systems to solve human problems. And when agriculture is at its best, it serves people and communities. Historically, food has been the big problem to solve. In the last century, food continued to be just as important, but it has become a smaller percentage of what agriculture does as farmers and the agricultural industry tackle new problems. Consider how many bushels of the twenty-three million Iowa acres of corn and soybeans will be consumed as food or as feed for animal agriculture.¹ A growing share of those bushels goes into fuel, lubricants, fibers, and countless other industrial products. In the future, feeding people will continue to become a smaller percentage of the problems farmers solve by managing living systems.

Environmental services are one of the most important emerging challenges for American agriculture to tackle. In this talk, I'm drawing on some of Neil's past work, connecting it to some of his most recent work, and then looking to the future to see how Neil's contributions to agricultural law will continue to shape the industry for years to come.

1. USDA NAT'L AGRIC. STATISTICS SERV., IOWA AG NEWS – 2018 CROP PRODUCTION 1 (Feb. 8, 2019), <https://perma.cc/97RB-PAH6>.

II. NEIL'S LEGACY

First, let us explore what we mean by Neil's Legacy. This is my attempt to provide a sociological deconstruction of how Neil has shaped both the practice of agricultural law and the direction of American agriculture. Let's look at the five characteristics of his legacy.

A. Neil As the Bold Visionary

Neil sees things ahead of other people. Sometimes years ahead. Whether it is marketing and production contracts, biotechnology, wind energy, local foods, or, one of his most recent areas of interest, private conservation incentives. Private conservation incentive is a term he constructed to try and explain the emerging concept of non-traditional entities attempting to shape farm conservation, for example Unilever.² Neil is one of the first in the agriculture community to see what is coming over the horizon. And as a professor of agricultural law, he is always concerned about the legal agreements, agricultural policies that shape these agreements, and the agricultural policies shaped by these agreements.

B. Neil As the Great Questioner

Neil is always asking what do these contracts and policies mean for farmers. He immediately starts methodically laying out the questions farmers need to consider when faced with a new innovation, policy, market, or business structure. Those questions drive his work and often end up as lists of questions or as lists of what farmers need to consider, for example, "Hamilton's Twelve Basic Rules of Contracting."³ Throughout his career, Neil has been challenging farmers, bankers, rural leaders, University Extension specialists, and elected officials to ask important questions about the contracts farmers are signing. Neil has never been afraid to ask the challenging and even uncomfortable questions.

C. Neil As the Eternal Optimist

Neil is hopeful farmers can maintain some power, that contracts can be developed and negotiated for better outcomes. He never accepts a top down industry advancement as the final word. He never assumes the sky is falling with only declining opportunities for farmers and rural communities. He looks for

2. See generally *Sustainable Sourcing*, UNILEVER, <https://perma.cc/SA7N-MBN3> (archived Sept. 24, 2019).

3. NEIL D. HAMILTON, THE NAT'L AGRIC. L. CTR., FARMER'S LEGAL GUIDE TO PRODUCTION CONTRACTS 18-19 (1995), <https://perma.cc/NP2D-65GS>.

opportunities, sometime niches like the local food movement and sometimes big policies changes like the Conservation Title in the 1985 Farm Bill.⁴

D. Neil As the Big Believer

Neil always believes in farmers, rural communities, and the transformative power of growing things. It is why he has kept at it for over thirty-five years. Through the market corrections, the full-scale crises, the super cycles, the lawsuits, and the generations of attorneys practicing agricultural law he's taught and mentored—his belief in and love for agriculture never wains. And if there is a need to choose a side, he always chooses farmers and rural communities. He also continues to grow things. Even after selling the last acres of his family farm in Adams County, he continues the ritual of planting and harvesting and keeping bees at Sunstead Farm where he lives and farms with his wife Khanh in rural Waukee. He believes in the transformative power of growing things.

E. Neil As the Brave Crusader

He has always been willing to fight for what he believes in. Neil pulls no punches in his analysis of a situation. He applies the full weight of his insights to the legal, economic, environmental, social, and moral consequences of the emerging innovation. His crusading is never to tear down. His focus is always to empower farmers. Sometimes that means challenging powerful interests profiting at the expense of farmers and rural communities. Neil's constant focus on the legal agreements in the agricultural arena is his most effective tool as a crusader. In order to help farmers better understand their rights and responsibilities, Neil has always been willing to take on powerful figures, businesses, and organizations.

III. APPLYING THE LEGACY

A. Pork

In the case of the pork industry, Neil could see what was coming in terms of vertical integration. By the early 1990s he was already writing about a bold vision of how the pork industry was about to dramatically change things for hog farmers. He challenged farmers to consider how industry changes were going to alter their ability to raise hogs. He focused on farmers and rural communities because that has always been his lens in analyzing a problem, situation, or trend. As production

4. See Neil D. Hamilton, *Sustainable Agriculture: The Role of the Attorney*, 20 ENVTL. L. REV. (1990); see generally Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1504-18.

and marketing contracts began to dominate the pork industry, Neil knew how important those contracts were going to be for farmers and rural communities.

Throughout the 1990s, Neil was challenging farmers, bankers, rural leaders, elected officials, and University Extension specialists to ask important questions about what was going into the contracts between the farmers and the pork integrators. He was hopeful farmers could maintain some power, and contracts could be developed and negotiated for better outcomes.

He did not give up on the pork industry. He found hope and optimism in helping farmers find a new way to raise hogs. His work on contracts helped develop alternative pork in general and Niman Ranch specifically.⁵ His investment in food policy and the local food movement intersected with new opportunities for pork farmers. He believed in farmers and rural communities. When the pork industry in Iowa advanced in ways creating leaky systems polluting water and fouled the air, he sided with rural communities. When he convened conferences and gatherings, he always included farmers.

Neil continues to crusade for animal agriculture empowering farmers, rural communities, and our environment. His analysis of the legal agreements in the pork industry provide important insights into how some aspects of modern pork production no longer work for farmers, rural communities, and our environment.

What went wrong with the pork industry, even as some things went really well? What went well was increased efficiencies in terms of feed conversion and labor. For some farmers, contract pork production reduced risks. But many things went wrong. When looking at the power imbalance between who wrote the contracts and the farmers who signed them, it should come as no surprise.

The value of pork production moved to the top of the supply chain. Farmers increasingly became more like hired managers. Innovation moved away from the farm. Costs became externalized, especially environmental costs. Animal welfare systems initially became more brutal, and animal management systems became more brittle with greater biosecurity threats. While some of the trends to larger operations and more industrial technologies were already underway, the enormous transformation of the pork industry from 1990 to 2005 was fueled by what was written in the contracts.

On the animal welfare front, the systems have become less brutal in general. Much of this can be attributed to farmers and consumers working together for alternative pork production and a push back from consumers on the regulatory

5. See generally *About Niman Ranch*, NIMAN RANCH, <https://perma.cc/PRV4-9CXM> (archived Sept. 25, 2019).

front, gestation crates are an example. But the consequences of a new focus on animal welfare goes beyond gestation crates as confined animal feeding operations got redesigned for better housing conditions for pigs.

Had farmers continued to innovate on their farms and been rewarded for that innovation, we could still have highly efficient systems in terms of feed conversion and labor, but arguably, we could have avoided much of what went wrong over the past twenty-five years in the pork industry.

B. Climate Action

About five years ago, Neil started looking at the emergence of efforts to encourage on farm conservation outside of traditional government programs. Agricultural businesses and farm organizations had started to develop what can be described as “private conservation incentives” (PCIs), designed to encourage farmers to adopt conservation practices, improve soil health, and address environmental issues such as nitrate loss and climate change.⁶

In many ways, Neil was at work applying his “legacy” to this emerging trend in agriculture. He could see on the horizon the intersection of a response to climate change, big data, water quality, a decline in government supported conservation, and the rise of public-private partnerships. He started scribbling lists of questions farmers should be asking about these trends. He identified opportunities where farmers might make more money innovating around conservation practices. He believed farmers could do this as he thought about the dozens of farmers he had speak about conservation innovation at conferences he’d convened over the years. And he started to think about how to shape the legal agreements that were bound to affect how agricultural environmental services would be implemented by farmers across the country.

Neil helped us understand how we could have had a better pork industry in Iowa. We would have a different pork industry if the contracts had been written to financially reward farmers for innovating on their farms. Would we have less externalized environmental costs? I think so. Would additional value in the pork supply chain have remained with farmers and rural communities? I think so. Would we have found ways to manage hogs sooner without the overuse of antibiotics? I think so.

Today, we are at a similar place with environmental services as we were with the pork industry in 1990. There is a growing demand for managing living systems

6. NEIL HAMILTON & MATT RUSSELL, LEOPOLD CTR. FOR SUSTAINABLE AGRIC., EVALUATING HOW PRIVATE CONSERVATION INITIATIVES MAY INCREASE FARMER ADOPTION OF CONSERVATION PRACTICES 1 (2017).

to solve multiple human problems, the most important being finding solutions to climate change. At the same time, we are seeing the public sector, especially in agriculture, become less supportive of conservation. What is emerging are entrepreneurs looking to big data and top of the supply chain behemoths like Walmart and Unilever starting to make a play at monetizing the value of environmental services. There are huge opportunities emerging in agriculture for environmental services, especially in terms of climate services. There will be strong financial incentives to reduce greenhouse gas emissions. There may be even more financial rewards for capturing and storing carbon.

The legal agreements between farmers managing the land and the top of the supply chain need to encourage farmers to take risks to innovate, and these agreements need to include paying farmers for their success when the innovation works. But as Neil is keen to notice, that is not how PCIs are being organized. He is identifying the questions for farmers to ask.⁷ He sees opportunities for greater conservation. He believes farmers can deliver real value. And he is continuing to crusade for the resources for farmers to be better stewards.⁸

How the legal agreements get shaped in the coming years can either accelerate climate action on American farms or slow it down. Like the failure to have contracts in the pork industry work better for farmers and rural communities, the costs of agricultural environmental service contracts not working for farmers and rural communities will not just be bad for farmers and rural communities. We have about twelve years to be fully engaged on fighting climate change. We are all depending on agricultural solutions to fight climate change. If we can figure out how to incentivize farmers to innovate at the highest level to reduce emissions and capture carbon, the benefits would be enormous.⁹

IV. THE NEXT AGRICULTURAL REVOLUTION

In order to increase carbon in our soils, farmers have to manage their farms around these four conservation practice areas: conservation tillage, permaculture (cover crops and woody vegetation), integrating livestock into diverse farming systems (managed grazing and manure management), and extending crop rotations. For maximum environmental benefit, farmers must stack these practices

7. NEIL HAMILTON ET AL., DRAKE UNIV. AGRIC. LAW CTR., HOW TO IMPROVE WATER QUALITY ON IOWA FARMS, 58-60 (2018).

8. Neil Hamilton, *Iowa's clean water debate: What to believe?*, DES MOINES REG. (May 25, 2015), <https://perma.cc/A9JL-44PT>.

9. See Todd Edwards & Matt Russell, *Earth Friendly Agriculture for Soil, Water, and Climate: A Multijurisdictional Cooperative Approach*, 21 DRAKE J. AGRIC. L. 325 (2016).

together and include a fifth practice of generating on farm energy. For example, a farm might introduce reduced tillage in a five-year-four crop rotation (corn, beans, oats, alfalfa, alfalfa), using livestock to graze back cover crops, and strategically installing solar with pollinator habitat on acres with low productivity.¹⁰ As carbon becomes monetized, the value of what a farm can deliver could begin to leverage real dollars for the farm and the rural community.¹¹ But it will only happen if the legal agreements including farm policy and contracts with businesses and emerging carbon markets help keep a significant amount of the value of the agricultural environmental services at the farm gate.

On-farm climate action is the basis for transforming agriculture.¹² The benefits include better water quality, increased productivity with a wider variety of crops, revitalization of rural communities, and global leadership in agricultural innovation.¹³ But this will only happen if farmers are innovating on their farms. If they are only adopting practices defined by the top of the supply chains, we will not innovate fast enough to avoid the worst consequences of global warming and the climate crisis.¹⁴

Neil has laid out the foundation for what needs to be done. We need a legal structure to incentivize innovation and payments for agricultural environmental services on farms. We can apply Neil's Legacy. We can see the big disruptions from climate change coming to agriculture. We need to identify the important questions like: How are farmers going to get paid to innovate? The disruption creates huge opportunities for American farmers to use their farms to solve big human problems. There is a growing belief that farmers can help solve these problems. And it is going to take the agricultural law community crusading on behalf of American farmers to make sure we get the legal frameworks right—policies, contracts, and carbon markets.

Do we believe in the American farmer? It's clear that Neil always has, and his life's work provides a path forward to make sure the legal agreements farmers are signing work for them, for their rural communities, and for the entire world.

10. Robert Leondar & Matt Russell, *'Our Small Towns Are Toppling Like Dominos': Why We Should Cut Some Farmers a Check*, N.Y. TIMES (June 24, 2019), <https://perma.cc/Q5NS-24AT>.

11. *Id.*

12. Matthew Russell, *Farmers can profit economically and politically by addressing climate change*, THE CONVERSATION (Apr. 4, 2017), <https://perma.cc/F4XY-9HTA>.

13. *Id.*

14. Robert Leonard & Matt Russell, *What Democrats Need to Know to Win in Rural America*, N.Y. TIMES (Mar. 17, 2019), <https://perma.cc/HV5W-W2ES>.