

NEIL HAMILTON'S AGRICULTURAL LOCALISM

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As part of this Festschrift, I was asked to write an essay about Neil Hamilton's contributions to state and local government law. For over a decade, I have taught a course in state and local government law at the University of Nebraska College of Law, as well as a course in land use regulation. In fact, my interest in those subjects has something to do with a discussion Neil and I had when I first started teaching in 2006. In the summer of that year, I visited Drake University Law School and walked to a taco shop nearby with Neil and Doug O'Brien, who also worked at the Drake University Agricultural Law Center. Sometime during the course those few hours, I asked Neil what he thought would be interesting for someone like me to do in a field as dauntingly vast for a young law professor as agricultural law. He suggested I look at natural resource districts and how they relate to agricultural production. Since then, I have spent significant amounts of time working to understand local governments—including the communities they reflect, the conditions under which they thrive, their utility, their drawbacks, and the legalities of their operations. Today, I also serve as a Director on the Lower Platte South Natural Resources District, which encompasses a large swath of eastern Nebraska lying within the Platte River Basin, including Lincoln.

So Neil's suggestion helped me along a path that, I hope, serves to deepen my students', my peers', and the public's understanding of local government institutions. And while I won't seek to measure my contributions and hold them up as significant, it is significant that Neil suggested local government as a teaching opportunity. Most of the legal academy's focus is on issues of national importance, which tends to translate into national institutions and national or international policymaking and legal restraints. But Neil treated local governments as important, even in an area as broad and deep as agricultural law. He was right. And his work reflects that understanding.

Any legal scholar's work tends to be categorized at some time or another as teaching, service, and scholarship. Perhaps the most significant evidence of Neil's regard for local government is his teaching. He has taught courses in legislation (focused on Iowa) for over twenty-five years, and a land use course for at least twenty years at Drake. Obviously, many students have taken those courses over the years, and it would do no justice to Neil's work to fail to acknowledge this contribution. Without someone on a law school's faculty talking about local

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governments, a large body of important work lies dormant and, as a result, communities may suffer. Students need someone to bring this area of the law to their attention and law schools need to teach it. So Neil's work in that regard is exceedingly important.

There are also Neil's service-oriented contributions to Iowa's local government scene. As with teaching, it is difficult for an outsider (or, perhaps more apropos, a non-local) to make adequate observations of a fellow academic's service contributions. But I can offer a few examples of work I have observed as evidence of Neil's attention to the local aspects of agricultural and rural issues. These examples are probably representative of a larger body of relevant work.

The most recent examples include Neil's work on water quality issues facing Des Moines. From his work with the Des Moines Water Works (a local government institution),¹ to his *Our Water Our Land* video series on water quality,² these efforts reach out in a very on-the-ground way to communities—the essence of local government—issuing a call to action. Indeed, the litigation itself has significant local government aspects to it that proved fatal to liability.³

One of Neil's most recent discussions focuses on using Hydrologic Unit Code 12 watersheds to organize projects to improve water quality, in cooperation with other institutions like Soil and Water Conservation Districts or Drainage Districts.⁴ The local government aspects of this call to action are clear.

Of course, Neil's local outreach is well known in food circles. From his work on farmers' markets to the Center's work for over a decade on the Buy Fresh Buy Local Des Moines campaign, local efforts are a big part of Neil's life. His farm, after all, is part of a community of people centered around food.

A much earlier service-oriented experience I had with Neil was his twenty-fifth anniversary celebration of the Center, where the organizing title was *Rural Lands, Rural Livelihoods*.⁵ This event in 2007 featured discussions of using rural

1. See generally *History*, DES MOINES WATER WORKS, <https://perma.cc/J5VS-TDGR> (archived Sept. 24, 2019) (explaining that Des Moines Water Works was formed as a public utility under Iowa Code in 1919).

2. See generally *Our Water Our Land*, DRAKE U. AGRIC. L. CTR., <https://perma.cc/73AC-WTE9> (archived Sept. 23, 2019).

3. See *Bd. of Water Works Trs. v. Sac Cty. Bd. of Supervisors*, 890 N.W.2d 50 (Iowa 2017).

4. Neil D. Hamilton, Drake Univ. Agric. Law Ctr., Address at 19th Annual Water Conferences: Watershed Citizenship, 6-10 (Mar. 12, 2019) (on file at <https://perma.cc/Y6MB-LUXT>).

5. See *Using Land and Natural Resources to Revitalize Rural Iowa*, DRAKE U. NEWS & EVENTS (Sept. 20, 2007), <https://perma.cc/3JW7-VHJG>.

lands in ways that brought value to resources and resource uses that had not historically generated farm income.⁶ What marked the effort as significant, for present purposes, was the scope of entities and people involved and the localist flare many of the discussions took. Cooperating entities included the Iowa Natural Heritage Foundation, United States Department of Agriculture's (USDA) Rural Development office in Iowa, the Lillian Goldman Charitable Trust and speakers from the Foundation, Iowa Department of Economic Development, USDA's Rural Development, and the Leopold Center for Sustainable Agriculture.⁷ To round things out, former Iowa Governor Thomas Vilsack also spoke.⁸ This broad range of speakers often spoke of community and the need to bring rural revitalization to Iowa as part of a grassroots effort at the local level. Like any good scholar, Neil used his work from this service endeavor to inform his teaching, even going so far as to offer courses with the same title at Drake and the University of Arkansas School of Law. Neil even got some scholarly mileage out of the endeavor by writing an article on the subject.⁹ This article exhibits what I see as one of two ways in which localist thought is reflected in Neil's work over the course of his career.

Before I discuss the overall development of localist thinking in Neil's work, it is worth mentioning the data set I used and the slight expansion I have just made from local government to localism. As for the data set, I easily located fifty-one articles spanning the dates 1981 to 2017 in the HeinOnline collection of periodicals. At the Festschrift, I used the list of articles as a visual aid and have attached it here as an appendix.¹⁰ It is impressive and, of course, omits many other published pieces not published in law reviews. Center publications, for instance, do not appear in this set. But for present purposes, these fifty-one articles provide adequate foundation for my main conclusion: Neil's scholarship deepens our understanding of how local governments, local action, and local concerns are fundamental to agricultural law.

The expansion of my thesis was brought on by my inquiry into Neil's work. Beyond the pieces I discuss below, Neil did not really write about local governments much. That, of course, is not a very interesting thesis to offer a

6. *Id.*

7. *Id.*

8. *Id.*

9. See Neil D. Hamilton, *Rural Lands and Rural Livelihoods: Using Land and Natural Resources to Revitalize Rural America*, 13 DRAKE J. AGRIC. L. 179 (2008) [hereinafter *Rural Lands and Rural Livelihoods*].

10. Anthony B. Schutz, *Hamilton*, GOOGLEDPCS, <https://perma.cc/29V4-2SRJ> (archived Aug. 8, 2019).

Festschrift audience. More importantly, a focus on local government is a poor lens through which to examine Neil's work. After all, the very existence of local governments (their creation or use) involves questions of community, geography, and the nature of problems or the impacts that action can have. This localism runs throughout Neil's work.

Early on, Neil's work brought up local concerns in an institutional or legalistic format. He was concerned in early articles with things like displacing local control through statutory protections for producers and the judiciary's role in interpreting those statutes.¹¹ In 1984 and 1988 he wrote about appealing Agricultural Stabilization and Conservation Service decisions, which are issued through a process that starts with a locally elected administrative body. These local bodies enhance compliance and lend an air of legitimacy to the administration of these programs.¹² As early as the 1933 Agricultural Adjustment Act¹³ and in 1936 with the Soil Conservation and Domestic Allotment Act¹⁴ we realized the necessity of localism in agricultural policy. The Standard State Soil Conservation District Law¹⁵ is strong evidence as well.

Through about 1989, Neil's work focused on the bread and butter of agricultural law and policy. Grain warehouses and bankruptcy,¹⁶ farm tenancy,¹⁷ conservation easements,¹⁸ the Conservation Reserve Program (supplemented with

11. Neil D. Hamilton, *Freedom to Farm! Understanding the Agriculture Exemption to County Zoning in Iowa*, 31 DRAKE L. REV. 565 (1981-82); see also 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).

12. Neil D. Hamilton, *Farmers' Rights to Appeal ASCS Decisions Denying Farm Program Benefits*, 29 S.D. L. REV. 282 (1984); see also Neil D. Hamilton, *Legal Issues Arising in Federal Court Appeals of ASCS Decisions Administering Federal Farm Programs*, 12 HAMLINE L. REV. 633 (1989).

13. See generally Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31.

14. See generally Soil Conservation and Domestic Allotment Act of 1935, Pub. L. No. 74-46, 49 Stat. 163.

15. See generally STATE SOIL CONSERVATION DISTRICT LAW, USDA SOIL CONSERVATION SERVICE 7-14 (1936).

16. Neil D. Hamilton & J. W. Looney, *Federal and State Regulation of Grain Warehouses and Grain Warehouse Bankruptcy*, 27 S.D. L. REV. 334 (1982).

17. Neil D. Hamilton, *Legal Aspects of Farm Tenancy in Iowa*, 34 DRAKE L. REV. 267 (1984-85).

18. Neil D. Hamilton, *Legal Authority for Federal Acquisition of Conservation Easements to Provide Agricultural Credit Relief*, 35 DRAKE L. REV. 477 (1985-86).

state action),¹⁹ secured credit,²⁰ and drainage (accomplished with local governments dealing with local issues),²¹ were subjects Neil took up.²² Many of these subjects involve significant local dimensions Neil did not overlook. For instance, the local aspects of enforcing federal soil conservation programs got significant attention from Neil in 1990.²³

By 1993, and as early as 1988, Neil's work began to shift to broader policy-oriented concerns. The 1988 piece²⁴ and the early 1993 piece²⁵ started a trend

19. Neil D. Hamilton, *State Initiatives to Supplement the Conservation Reserve Program*, 37 DRAKE L. REV. 251 (1987-88).

20. Neil D. Hamilton, *Securing Creditor Interests in Federal Farm Program Payments*, 33 S.D. L. REV. 1 (1988).

21. Neil D. Hamilton, *Iowa Surface Drainage Law and Groundwater Quality Protection: Is There Potential Landowner Liability for Plugging Agricultural Drainage Wells and Sinkholes?*, 39 DRAKE L. REV. 809 (1989-90).

22. And throughout his scholarship to date, he has spent time on these bread and butter issues, including how to teach them. See Neil D. Hamilton, *The Study of Agriculture Law in the United States: Education, Organization and Practice*, 43 ARK. L. REV. 503 (1990); see also NEIL D. HAMILTON, DRAKE U. AGRIC. LAW CTR., WHO OWNS DINNER: EVOLVING LEGAL MECHANISMS FOR OWNERSHIP OF PLANT GENETIC RESOURCES OR WILL RECOGNIZING INTELLECTUAL PROPERTY RIGHTS IN PLANTS RESHAPE INTERNATIONAL AGRICULTURE? (1993); Matthew G. Doré et al., *How You Gonna Keep 'Em down on the Farm After Baur v. Baur Farms, Inc.? An Analysis and Defense of the "Reasonable Expectations" Standard for Iowa Oppression Cases*, 18 DRAKE J. AGRIC. L. 429 (2013); Neil D. Hamilton, *Essay, Agricultural Production and Environmental Policy: How Should Producers Respond?*, 1 DRAKE J. AGRIC. L. 141 (1996); Neil D. Hamilton, *Broiler Contracting in the United States—A Current Contract Analysis Addressing Legal Issues and Grower Concerns*, 7 DRAKE J. AGRIC. L. 43 (2002); Neil D. Hamilton, *Forced Feeding: New Legal Issues in the Biotechnology Policy Debate*, 17 WASH. U. J. L. & POL'Y 37 (2005); Neil D. Hamilton, *Legal Issues Shaping Society's Acceptance of Biotechnology and Genetically Modified Organisms*, 6 DRAKE J. AGRIC. L. 81 (2001); Neil D. Hamilton, *One Bad Day: Thoughts on the Difference Between Animal Rights and Animal Welfare*, 106 MICH. L. REV. FIRST IMPRESSIONS 138, (2008); Neil D. Hamilton, *State Regulation of Agricultural Production Contracts*, 25 U. MEM. L. REV. 1051 (1995); Neil D. Hamilton, *The 2014 Farm Bill: Lessons in Patience, Politics, and Persuasion*, 19 DRAKE J. AGRIC. L. 1 (2014).

23. Neil D. Hamilton, *Legal Issues in Enforcing Federal Soil Conservation Programs: An Introduction and Preliminary Review*, 23 U.C. DAVIS L. REV. 637 (1990).

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

25. Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210 (1993); see also 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 (1994).

toward the normative, though practical, pieces Neil is perhaps best known for.²⁶ In 1994's *Why Own the Farm*²⁷ and 1996's *The New Agriculture*²⁸ Neil starts to offer his views of where agriculture should go, and why. Driven by a desire to create or maintain community in the midst of an industrializing agriculture, Neil makes the call for farmers' markets; harnessing the power of demand for fresh, seasonal, and organic foods; local branding at the hands of individual chefs; and direct farm marketing.

In 1998, food security entered the portfolio,²⁹ along with *Putting a Face to Our Food* and *Food Democracy* (at least twice) in 2002, 2004, and 2005.³⁰ The connections these pieces see between people are built around food occur in tight geographic spaces. They are powerful, and they are powerful because they are local. These works take federalism as a source of empowerment trickling down to local levels: "[S]tate and local food policy capitalizes on the ability of people to control their own destiny by using institutions they control, empowering them to take charge of their future."³¹

In 2008, Neil's expansion into using rural lands for a broader set of economic activities had a local flavor.³² The attention in 2011 to a new age of Agrarians focuses on local food production, using local institutions to support that

26. Indeed, the emergence of numbered lists in the title of the works helps one recognize Neil's work.

27. See Neil D. Hamilton, *Why Own the Farm If You Can Own the Farmer (and the Crop)?: Contract Production and Intellectual Property Protection of Grain Crops*, 73 NEB. L. REV. 48 (1994).

28. See NEIL D. HAMILTON, DRAKE AGRIC. LAW CTR., TENDING THE SEEDS: THE EMERGENCE OF A NEW AGRICULTURE IN THE UNITED STATES (1996); see also Neil D. Hamilton, *Greening Our Garden: Public Policies to Support the New Agriculture*, 2 DRAKE J. AGRIC. L. 357 (1997); Neil D. Hamilton, *Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 DRAKE L. REV. 289 (1997).

29. 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 (1999).

30. 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) [hereinafter *Putting a Face on Our Food*]; Neil Hamilton, Essay, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9 (2004); Neil D. Hamilton, *Food Democracy II: Revolution or Restoration?*, 1 J. FOOD L. & POL'Y 13 (2005); see also 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).

31. *Putting a Face on Our Food*, supra note 30, at 416.

32. *Rural Lands and Rural Livelihoods*, supra note 9.

production, and creating local agriculture on urban landscapes, with the help of the USDA.³³

In 2013, Neil's *Harvesting the Law* seems to focus more on the progression of an industrialized and non-local agriculture, though his attention to laws still working (or would work) in this day and age are those often involving local implementation, like land use regulation.³⁴ His 2015 piece on keeping farms and farmers in food law and policy, as well as his other work on land tenure has a clear geographic aspect ringing of many local concerns.³⁵ And, finally, Neil's idea of watershed citizenship, when it comes to print in an article somewhere soon, will likely be a further example of this thread of Neil's work: Policy achievement tends to involve significant local forces, solutions, and institutions.

This brief review of some of Neil's massive portfolio of written work leads me to believe Neil's attention to the local aspects of agriculture, government, and community is something scholars should emulate. Nearly no policy outcome comes to fruition without people on the ground making it happen in the vast and diverse local communities existing on agricultural, rural, and urban landscapes. Neil's work both acknowledges this fact and many times seeks to use the power of local to effectuate change. Thank you, Neil, for this contribution to agricultural law.

33. Neil D. Hamilton, *America's New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers*, 22 FORDHAM ENVTL. L. REV. 523 (2011).

34. Neil D. Hamilton, *Harvesting the Law: Personal Reflections on Thirty Years of Change in Agricultural Legislation*, 46 CREIGHTON L. REV. 563 (2013).

35. Neil D. Hamilton, *Keeping the Farm and Farmer in Food Policy and Law*, 11 J. FOOD L. & POL'Y 9 (2015); see also Neil D. Hamilton, Essay, *The Role of Land Tenure in the Future of American Agriculture*, 22 DRAKE J. AGRIC. L. 349 (2017).