

FARMING, FREEDOM, AND DEMOCRACY: WHAT I HAVE LEARNED FROM PROFESSOR NEIL HAMILTON

Domenico Viti†

It is a great privilege to contribute in a collection of essays to honor Professor Neil Hamilton. I have known him now for almost thirty years creating such a friendship that has allowed a professor from Southeast Italy to visit Iowa several times, the very heart of world agriculture.

My first trip to Iowa was because the Dean of the University of Arkansas at Fayetteville at the time, my very good friend and brilliant scholar Jake Looney, who unfortunately recently passed away, invited me to listen to his lessons in a course at the Drake University Agricultural Law Center; at the time George Bush Senior was the President of the United States of America.¹ My acquaintance with Neil Hamilton, who I had previously listened to at the American Agricultural Law Congress in Minneapolis a few months earlier, started thanks to that summer program.

During that trip, I had the opportunity to visit the paradisiac garden of Neil Hamilton's Mother; the already aged lady spoke to me about the pervasive and important world of the Gardening Associations, something unusual for an Italian. I understood better the meaning of the pages of Alexis de Tocqueville, who in his masterpiece, *Democracy in America*, explained the importance in the United States of America of networks of people collaborating in a specific field; self-help organizations never imposed by an administrative or a political power.²

Moreover, it was during that visit I got to know the Drake University Agricultural Law Center and started to really understand the role of scholars like Neil Hamilton in the context of farming and development of rural areas. Professor Hamilton, in my view, is the expression of lawyers who are certainly policy-oriented, but never compromising with the power because they want to keep firm their independence of judgement. Experts who do not want to stay in the "turris eburnea" of Academics but prefer to deal also with the real world, basing nevertheless their

† University of Foggia, Italy.

1. See generally J.W. LOONEY, AGRICULTURAL LAW: A LAWYER'S GUIDE TO REPRESENTING FARM CLIENTS (1990) (published in 1990 by the American Bar Association, was in the pre-internet era the most accessible way for foreign lawyers to be introduced to United States Agricultural Law).

2. See ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 157-66 (Henry Reeve trans., Simon & Brown 2013) (1838).

ideas on advanced research and studies.³

I have tried to go deeper in understanding the important role of a lawyer like Neil Hamilton in getting involved, not in theoretical disputes but in the concrete shaping of farming in the United States. When I think about Hamilton's work on legislative provisions, I recall the importance of first determining if legislation is useful to the farmer or not, and secondly if there is a theoretical coherence in the legal system.

It appears to me, the United States legal education system also encourages agricultural lawyers to commit themselves to the best of the farming community. The fact the Juris Doctorate (J.D.) degree is a graduate course in America's education system has meant many American agricultural lawyers get a technical or economical education related to agriculture at the Bachelor level.⁴

Other possible reasons of such capability within the United States are the long-standing experience of universities regarding extension services to farming and, in my opinion even more, the cultural heritage of the great Iowan who was Henry A. Wallace.⁵ I have always believed the Extension network is the best kept secret of American agriculture.⁶ A few European Countries have some original and clever assistance programs to farmers, like the role of huge cooperatives in the Netherlands.⁷ Overall, in the so called Second Pillar of the Common Agricultural Policy (C.A.P.) various policies have tried to enhance such relationship between farmers and scientific institutions, but I really do not think any commendable level, at least at the European level, was ever achieved.⁸

3. They are quite specific in the fascinating story of American farming and law.

4. Holding a degree in agri-business economics can help to understand in a broader view the application of legal rules regarding farming.

5. See Tom Longden, *Henry A. Wallace*, DES MOINES REG.: DATA CENT., <https://perma.cc/6383-NSTU> (archived July 26, 2019).

6. I understand that Drake University is not part of the Extension network; even without getting the financial support by the very peculiar legislation that is the Hatch Act and the Smith-Lever Act the Drake University Agricultural Law Center, in my view, has operated, similarly to an Extension board. See *Smith-Lever Act*, 7 U.S.C §§ 341-42 (2018); *Hatch Act*, 7 U.S.C. § 361 (1952) (current version at 7 U.S.C. § 361g (2018)).

7. See PAUL TERWAN ET AL., MINISTRY OF ECON. AFFAIRS, THE COOPERATIVE APPROACH UNDER THE NEW DUTCH AGRI-ENVIRONMENT-CLIMATE SCHEME 3 (2016), <https://perma.cc/V5PN-K6XG>. If there is in the European Common Agricultural Policy a very large shortcoming it has been that it has never had a decent extension supporting the farmers.

8. Actually, at the moment it is quite impressive the outstanding use of farming extension in China in recent years; evidently Chinese policies have learned many things from the United States, not just regarding technologies but also best practices to improve agriculture and rural areas. See Fu Cheng et al., *Current Status of Agricultural Extension in China*, 26 HortTechnology 846, 846 (2016).

The way legal reasoning concerning agriculture has been framed in the United States, I believe, comes from the superior mind of Henry A. Wallace.⁹ Probably three giants have allowed the Western world to enjoy such long peaceful and economically sound times following World War II; one British, John M. Keynes, and two Americans, General George Marshall and Henry A. Wallace.

If famine and starvation completely disappeared, at least in the developed countries, it has been especially thanks to the visionary genius of the American main strategist of agriculture; an Iowan who never became President but who left a fundamental print in the farming policy and legislation;¹⁰ and I believe the only European at the same level of Wallace was Edgard Pisani, who died a few years ago.

Wallace has left a perduring grand strategy in agricultural policy, a heritage which has shaped American agricultural law. France has been the European Country which has mostly resembled the experience in the United States,¹¹ and through the French influence, a part of the American attitude has become part of European agricultural law.

Not for chance, the place in Europe that has most resembled the role of the Drake University Agricultural Law Center is Nantes, where research promoted high legal knowledge with a strong governmental understanding by Louis Lorvellec. As I see Neil Hamilton under the shining heritage to Henry A. Wallace, I saw the late professor Lorvellec following the path of Edgard Pisani.¹²

Neil Hamilton's vision about agriculture and legislation really comes from an Iowan tradition. Norman Borloug, another Iowan, was not a creator of legislation but his Nobel Prize for Peace testifies to the extent the World benefited from his approach to biology, agronomy, and environment. It is curious how Iowa has this capacity to generate children who want to promote farming, while preserving the environment and the fundamental rights of people.

9. See generally Longden, *supra* note 5 (demonstrating Wallace was not technically a lawyer, even though he created the legal structure which has made the United States agricultural law so unique).

10. *Id.* Unfortunately, in my country Fascism promoted the economic philosophy of Wallace, because it justified a strong role of the State to shape the economy, so he was later forgotten; yet we still owe him a lot.

11. See generally EUROPEAN UNION, JEAN MONNET: THE UNIFYING FORCE BEHIND THE BIRTH OF THE EUROPEAN UNION, <https://perma.cc/G8RJ-L6LY> (archived July 26, 2019). Jean Monnet, the chief theorist of a United Europe, represented France Libre of Charles de Gaulle in the USA; he knew very well most the New Deal's policy-makers.

12. Italy, however, has had an important role in posing the theoretical foundation of Agricultural Law, thanks to the School of Pisa.

It is surprising to have such a concentration of so many outstanding minds dedicated to agriculture in a relatively small part of the World. Maybe that is because Iowa has always been a state of free farmers and the so called *Yeomen*.

When I read the books and the articles of Neil Hamilton, I can feel how deeply rooted the legal intricacies are under a broad base of knowledge and in a large context is based on a robust cultural tradition. For instance, Professor Hamilton has always supported the family farm because he has the idea, as Wallace and Pisani had, that agriculture shows very specific respects to the other economic sectors. The farmer provides goods, but also valuable services to society, which corporate farming usually overlook while merely following the short-term profit. Failing to follow previous demonstrations of what the family farm can offer to society.

A driving factor behind the family farmer's behavior is that they rationally want to keep the farm for the next generations, indirectly acting in a way that often preserves the environment and social structure surrounding them. Reminding us all of the analysis of family farms by Alexander Chayanov. The Russian scholar understood very brilliantly the relatively modest role of immediate profit for the family farmer; not for chance, he was killed by order of Stalin who had decide to promote state's owned giant farms, which at the end have depleted Soviet agriculture and environment.

In the United States it has been natural to think like Chayanov, maybe because in America it is taken for granted what in other Countries is the result of a long and sometimes even violent process. In the writings of Neil Hamilton, especially in times when he allowed us to clearly see the direct impact by farmers' markets or contract farming,¹³ he was, and remains, always on the side of the family farm. Not for an ideologic choice but because he has the right perception about what is useful, not just for farmers but also for the whole of people.

In this role there may be an overall political view of Neil Hamilton. I recall him valuing individual rights being strongly protected and connected with social rights. Public policies should bring social justice never in any way limiting liberty. Freedom carries both the burden of duty and responsibility of this concept and the farmer can embody the basic idea of the wonderful the United States Constitution. In that, Professor Hamilton is a quintessential American. Idealistic, with a lot of realism; well learned and knowledgeable but also practical and operative.

13. See generally NEIL D. HAMILTON, THE LEGAL GUIDE FOR DIRECT FARM MARKETING (1999); NEIL D. HAMILTON, THE NAT'L AGRIC. L. CTR., FARMER'S LEGAL GUIDE TO PRODUCTION CONTRACTS 1 (1995), <https://perma.cc/JM9H-KQHY>. I am grateful to Neil Hamilton to have put myself, among others, in the Acknowledgments of his *The Legal Guide for Direct Farm Marketing*, published in 1999 by Drake University. Regarding the contract farming I remember the first book of his I read in 1994 published by the same University.

Agricultural law is considered by many in Academia as part of business law. From the work of Neil Hamilton, it is possible to understand how much deeper our field of research is. It is inherently connected with the inner rules by which society works. The United States was able to build up a legal framework which has allowed farming to remain a backbone of society, even while the total numbers in the field has fallen.

The American legal system has been able to effectively use legislation in agriculture. Using history as a way to find easier solutions to problems that in the past took up much of the energy fighting to solve shadows regarding property rights and tenancy issues. Since the New Deal in the United States and the creation of the European Community, we often forget agriculture for centuries had developed without public policies. Government can be very useful in allowing farmers to defy a changing world, despite the occasional governmental belief that they know better than the farmers themselves what is best for agriculture. Unfortunately, often the “citizens culture” of politicians, and even more so the technocrats, approach towards farming can be paternalistic. Every time there is the risk of policy backfire, sensitive relationships framed by history are erased.

Neil Hamilton has never been against an active role of the Government in agriculture. By far he has favored good practices coming from education and free choice, not imposed by an alien and distant power. While accepting subsidies as a way to increase farmers’ income, he is well aware how misuse of governmental aids can distort the market. In choosing between long term development of farming based cultural change and short-term changes funded by public financial incentives Neil Hamilton, I am sure, opts for the first solution.¹⁴

There is a line in the spirit of Americans that blends between a great fondness for freedom and the fond memory of the New Deal. I remember a great American journalist and intellectual, Walter Lippman, who was an enthusiast of the Government’s role in the beginning years of the Great Depression to become much more cautious when he started to be afraid of an over presence of the Government. I believe the same can be stated for Neil Hamilton; he accepts Farm Bills, but he is never fond of overregulation.¹⁵

14. I believe he is conscious of what anthropologists affirm, that good behavior started by economic support which is easy and fast, but shallow. The one that begins culturally takes time to be accepted but it lasts.

15. Americans often do not realize how much difference there is between American and European cultural attitudes regarding agriculture, especially when Mediterranean Europe is concerned; I believe it comes from Americans being a people where farmers had wide access to land and the necessity of strong horizontal relationships. It is a way of farming that the Amish or the Mennonite communities have developed at the highest stages. I remember when

The extensive conversations with Neil Hamilton about American farming allowed me to better understand the relationship among capital, labor, and market. Agricultural land is quite a unique asset of capital, especially because it shares with other natural resources that cannot be reproduced. Labor in agriculture tends to be different from other economic sectors, especially in the family farm. Social rewards for farmers are as important as the economic ones, especially since the farmer is usually a very atypical businessman. Moreover, labor intensive farming in advanced countries usually brings a strong presence of immigrated workforce.

Last but not least, there is the problem concerning how the market of agricultural products is structured. An elastic demand, cost of logistics and storage, the perishability of crops, naturally the disproportion of market strength between farmers and industrial processors, and, in the last years, the increasingly globalized heavy competition are just some factors to be considered.

In the many journeys around Iowa's countryside, I had the means to deepen my understanding of the meaning of human relationships among farmers as an asset. It is the social capital which really differentiates the best agriculturalists from others. Showcasing the role of cooperatives, consolidated contract farming, risk management, and using futures contracts all help to make United States agriculture so efficient. Agriculture in the United States is also looking for new opportunities and Neil Hamilton knows that creation of high-quality food chains could be one of the big policy bets for the future.

America is realizing agriculture aimed on mass production must eventually give way to a quality-oriented farming, where technology, protection of environment, and health of people should be combined. New challenges are quickly approaching and the full potential of American farming has not yet been deployed to pursue high quality agriculture. All of this while the United States, along with most industrial countries, is up against some looming national trends. On average, farmers in developed economies are becoming older, and as Neil Hamilton once more has anticipated this overlooked problem, stressing in a recent paper, this process can develop in the future in a quite short period.¹⁶

My county's agriculture is changing rapidly too. Italy has limited areas of flat land where there is the concentration of the most productive agriculture. A sort of collective intelligence has converted by labor and history some hilly areas in

I visited the pasture close to the Hamiltons' Farm, which I believe has been granted to an environmental foundation; cattle were left without watching at the grazing, because a sort of "social control" was enough to have full management of the grazing.

16. See Neil D. Hamilton, *Emerging Issues of 21st Century Agricultural Law and Rural Practice*, 12 DRAKE J. AGRIC. L. 79, 82-83 (2007) (containing a broad analysis by Neil Hamilton regarding the future of agriculture).

some of the best landscapes especially dedicated to wine grapes or olive tree plantations but most of the mountain and hilly countryside, after World War II, has had a strong decrease of population and many who remain are elderly.

European policies have tried to limit the damages of abandoning the land, but overall there have been difficulties in dealing with several variabilities.¹⁷ Ideas like the ones affirmed in the writings of Neil Hamilton can also be very useful in my Country. The size of agriculture is completely different, but the main issues for the future are similar, if not identical.

Through my years I started to discover the beauty of the American Mid-West landscape, a landscape wholly different from the Italian views but holding its own charm. Both our people should be very proud of their own agricultural landscapes and encourage conservation through legal institutions.

I completely share Neil Hamilton's ideas of an agriculture based on education, free entrepreneurship, and strong cultural engagements. Somehow, Sunstead Farm, where I enjoyed the kind and warm hospitality of Khanh and Neil Hamilton, and my family farm, Masseria Storica Pilapalucci,¹⁸ resemble each other. Neil Hamilton and I, even in historical heritage contexts quite far away, both have tried to embody similar views about agriculture. Not just in articles and books but in something more resilient than paper. Nobody knows how agriculture will be in the future but be assured, if the many brilliant ideas of Neil Hamilton are fully implemented many generations will still be able to explore an excellent combination of sustainable farming and landscape preservation.

17. Agriculture has progressively lost in Italy the political function which was gained after the last war. The Italian Constitution stated the role of the family farm; the Constitution was after the Fascism the outcome of a negotiation among different political cultures.

18. Masseria Storica Pilapalucci, <https://perma.cc/E5E7-J26R> (archived Sept. 7, 2019).