

The “right of relations” between human and seeds: an ecological, ontological and epistemological approach of the seeds legal regime complex

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Outline of the presentation

Context, issue and method:

- Naturalism and dualism in law: an issue
- The international seed regime complex

Presentation of the of “right of relations”:

- Research on the “right of relations”
- The “right of relations” as a legal argument
- Application to the legal property regime of seeds



The question of naturalism and dualism in law

Context

The nature/culture separation is not universal:

- any representation of nature is a social construct (Descola 2005; Latour 2004).

Issue

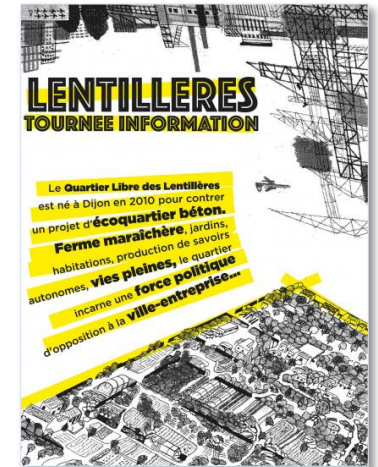
Other social constructions exist (Indigenous peoples) and should be recognized.

The nature/culture dichotomy is present in environmental law (Ost 2012)

Protecting nature "for itself" without integrating the populations who live there:

- reinforces the **nature/culture dichotomy**;
- is limited by the **naturalist framework**;
- and prolongs a **neo-colonial logic**.

Example: natural parks that expel Indigenous populations (Blanc 2020), the classification of seed types apart from their ecosystem & interaction (Frison 2020), etc.



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(Gutwirth & Tanas 2021)

The international seed regime complex (Raustiala & Viktor 2004) :

International Treaty on Plant Genetic Resources for Food and Agriculture (**FAO**), Convention on Biological Diversity (**CBD**), The Nagoya Protocol on Access and Benefit-sharing (**NP**), The International Union for the Protection of New Varieties of Plants (**UPOV**), The Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**):

- CBD, art. 15: recognizing the sovereign rights of states over their natural resources.
- Nagoya Protocol: access to genetic resources is bargained against benefit sharing (ABS) through a bilateral contract;
- FAO, art. 10-13: access and benefit sharing (ABS) is applied through a multilateral system (MLS) which facilitates access to seeds:
 - states decide to share access to their resources by creating a virtual common basket for seed exchange;
 - 64 of our major crop species in annex I (representing 80% of human consumption).
- FAO, art. 9: recognizes farmers' rights:
 - supports the protection of Traditional Knowledge, participation in benefit sharing, participation in national decision making.
 - not legally binding: United Nations Declaration on the Rights of Peasants - UN General Assembly Resolution 73/175 (17 December 2018).
- FAO, CBD, NP art. 1 : obligation to conserve and sustainably use seeds.

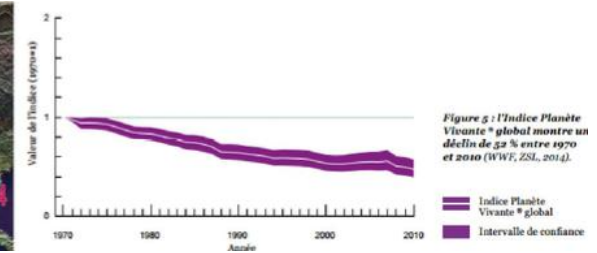
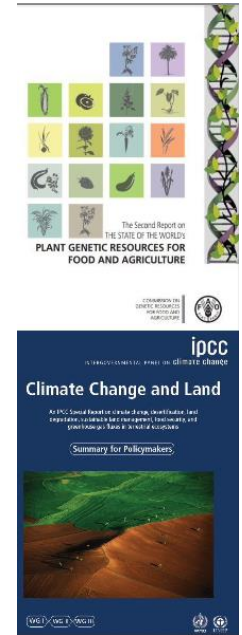
Packaged seed ready to be sold
@amazon



The international seed regime complex - critics

- The International Union for the Protection of New Varieties of Plants (**UPOV**) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) create a system that promotes **seed appropriation**:
 - technological development supports this appropriation and excludes informal seed exchanges;
example: criteria of distinction (D), homogeneity (H) and stability (S) for seeds (UPOV, article 5)
- Mainly considers seeds through a commercial (and naturalism) prism (Safrin 2004 "hyper-ownership"):
 - where seeds are seen as natural resources that should be controlled and exploited.
 - put aside all other types of relationships and prism that humans can have with seeds.
- Unsustainable management:
 - our linear and extractivist vision prevents us from having sustainable agricultural practices that will meet the world's food needs;
 - we must maintain the diversity of agricultural practices and not promote their standardization;

example: the virtual basket concerns a limited number of seeds (64 species) (Frison 2020).



Disregard for the rights of peasants

- Imbalance of rights **penalizing farmers** (regarding access to seeds, Traditional Knowledge):
 - ✓ art. 9 FAO Treaty is not sufficient to protect the right of farmers to save, use, exchange and sell farm-saved seed, as recognition remains at the discretion of each State;
 - ✓ the economic logic of the international regime is in direct confrontation with the rights of peasants;
 - ✓ art. 19 of United Nations Declaration on the Rights of Peasants is **not legally binding**.
- Recognition of traditional knowledge about seeds besides scientific (western) knowledge;
- Lack of participation of seed stakeholders in the international seed governance process;
 - the role of communities (local and global) in seed governance is crucial for knowledge production, innovation and human-seed coevolution.

A/RES/73/165

United Nations Declaration on the Rights of Peasants
and Other People Working in Rural Areas

Article 19

1. Peasants and other people working in rural areas have **the right to seeds**, in accordance with article 28 of the present Declaration, including:
 - (a) The right to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
 - (b) The right to equitably participate in sharing the benefits arising from the utilization of plant genetic resources for food and agriculture;
 - (c) The right to participate in the making of decisions on matters relating to the conservation and sustainable use of plant genetic resources for food and agriculture;
 - (d) The right to save, use, exchange and sell their farm-saved seed or propagating material.
2. Peasants and other people working in rural areas have the right to maintain, control, protect and develop their own seeds and traditional knowledge.
3. States shall take measures to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas.
4. States shall ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting and at an affordable price.
5. States shall recognize the rights of peasants to rely either on their own seeds or on other locally available seeds of their choice and to decide on the crops and species that they wish to grow.
6. States shall take appropriate measures to support peasant seed systems and promote the use of peasant seeds and agrobiodiversity.
7. States shall take appropriate measures to ensure that agricultural research and development integrates the needs of peasants and other people working in rural areas and to ensure their active participation in the definition of priorities and the undertaking of research and development, taking into account their experience, and increase investment in research and the development of orphan crops and seeds that respond to the needs of peasants and other people working in rural areas.
8. States shall ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws respect and take into account the rights, needs and realities of peasants and other people working in rural areas.

the "right to relations" in our research

Research Objective: the "right to relations" as a legal solution

- rethinking environmental law **without the nature/culture dichotomy**;
- linking **ecological, social and ontological questions** (Kumar 2013).

Hypothesis : the "right of relations" offers a **alternative legal framework, protecting:**

- **our relationship with *the environment***;
- **while respecting the ontologies** and forms these relationships may take (animistic, naturalistic, etc.).

Methodology:

Constructivist approach to law:

- the law is imbued with the "naturalist" context → may evolve to meet new social demands.

Empirical experiment:

- the "rights of relations" will be more precise in concrete claims;
- application of the "rights of relations" with Indigenous peoples.

The benefits of the « right of relations »

- Protecting *de facto* the relationships we may have with "nature":
 - Subjective, social, spiritual, political,...
- Confronts ownership issues in the international seed regime complex.
- Presents itself as a **language** and an **invitation to** dialogue concerning human rights (Petel 2020):
 - may address animist considerations in law.
- Against a **one-sided and objectivist narrative** of environmental law.
- Rights to be **re-articulated in specific, local and situated claims** :
 - Right of relations between humans and seeds
- Reuses legal arguments from the **Commoning** (Gutwirth & Stengers 2016 ; Capra & Mattei 2015):

Commoning is a practice where:

1. a group of humans
2. that self-organizes
3. around a resource,
4. where it deploys with a generative logic.



The "right of relations" as a legal argument

Creates new legal entities (relations between human and non-human)

- Welcomes the claims of Indigenous peoples...
 - compatible with naturalist framework.
- Reuses existing (or resurgent) legal constructs.
 - *Te Awa Tupua* (Whanganui River Claims Settlement Act 2017);
 - Rights of nature;
 - Ecocide.

Strategic use of the law

- Defends Indigenous peoples' claims.
- Acts from the local to the global.
- Use of law as a means of intra and inter collective dialogue:
 - relationship within the collective A;
 - dialogue between conflicting relations between collective A and B.



Demonstration of NGOs for the free use of seeds
in front of WIPO in Geneva on December 8, 2021.
| Keystone / Martial Trezzini

Conclusion : questioning the seed property regime complex



Protect **interactive and co-evolutionary links between farmers and seeds** in the legal regime of seed property:

- whether physical or metaphysical, cultural, spiritual, medicinal, etc.



The concept is theoretical, but it should be applied in concrete claims:

- **symbolic recognition, financial means;**
- In the case of a conflictual relationship, it may **build a space for dialogue.**



Questions the inequality between "**traditional**" and "**scientific**" **knowledge.**



It should **apply to physical seeds and information linked to seed.**

Bibliography

- Blanc, G., *L'invention du colonialisme vert: Pour en finir avec le mythe de l'Éden africain*, Paris, FLAMMARION, 9 Septembre 2020.
- Descola, P., *Par-delà nature et culture*, Bibliothèque des sciences humaines, Paris, Gallimard, 2005.
- Capra F. Mattei, U., *The Ecology of Law: Toward a Legal System in Tune with Nature and Community*, Oakland, CA, Berrett-Koehler Publishers, 5 October 2015.
- Frison, C., *Redesigning the Global Seed Commons*, London, Routledge, 30 June 2020.
- Gutwirth, S., Stengers, I., « Le droit à l'épreuve de la résurgence des commons », *Revue Juridique de l'Environnement*, 2016, n° 2016/2, pp. 306-343.
- Kumar, S., *Soil Soul Society: A New Trinity For Our Time*, Brighton, The Ivy Press, 2013.
- Latour, B., *Politics of nature: how to bring the sciences into democracy*, Cambridge, Mass, Harvard University Press, 2004.
- Ost, F., *La nature hors-la-loi*, Paris, La Découverte, 2012.
- Petel, M., « Analyse de l'usage stratégique des droits humains au sein du contentieux climatique contre les États (Analysis of the Strategic Use of Human Rights in Climate Litigation Against States) », Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2020-33.
- Raustiala, K. et Victor, D.G., « The Regime Complex for Plant Genetic Resources », *International Organization*, April 2004, vol. 58, n° 2, pp. 277-309.
- Safirin, S., « Hyperownership in a Time of Biotechnological Promise: The International Conflict to Control the Building Blocks of Life », *American Journal of International Law*, October 2004, vol. 98, n° 4, pp. 641-685.
- Walckiers, P., « Vers un « droit des relations » entre humains et non-humains comme alternative aux droits de la nature », *Annales de droit de Louvain*, 2022, vol. 1, pp. 9-30.

