

**THE TYRANNY
OF RIGHTS**

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FARMERS' RIGHTS AND PLANT BREEDERS' RIGHTS

While visiting a small village in Andhra Pradesh, India, I was told by the village seed keeper, a dalit (Untouchable) woman, that one year the wealthy farmer in the village experienced total crop failure. Left with none of his own seeds for planting in the next season, he had to turn to the dalit village seed keeper for seeds, thus rupturing the rigid caste structure of the village and opening the way to new social relations.

In spite of being used quite widely by a variety of very diverse elements, from peasant farmers and their militant organizations to UN agencies and seed companies such as Monsanto, the term 'farmers' rights' is certainly one of the most pernicious constructs of the rights language. What are mistakenly referred to as farmers' rights are essentially the collective prerogative of a class of people (farmers and gardeners) to practice and participate in the social custom of selecting, saving, swapping and replanting seeds from year to year. These activities can be described as the 'custodial responsibilities' of farmers, gardeners and subsistence peoples for seeds and the knowledge about them. These practices and

responsibilities are not granted by any authority, though they may be honoured by a rural community or village in recognition of their importance.

The observance of, not rights to, customary /traditional practices and knowledge – from seed saving to land management – is a matter of social, cultural and physical survival, not an individual business practice or a demand for legal status. Treating seeds as a commodity, and referring to the traditional practices of saving, swapping and replanting seed as a ‘right’, is a disrespectful dismissal of an essential and customarily sacred element in the lives of millions of people around the world today and throughout history.

Once seeds are defined as property, the issue becomes not how seeds are cared for but whose property they are. Since the middle of the 20th century, seeds have increasingly become the commercial property of corporations,⁵⁷ which use the mechanisms of hybridization, certification, genetic engineering, patents and contract production to exercise their *appropriated* ‘ownership rights’ over seed.* The customary agricultural practice of seed saving then becomes an exception to, or exemption from, the rule of capital.**

The powerful, in the form of state, class or corporation, can and do *assume* privileges for themselves. They may also *grant* privileges, in the form of rights, to less powerful supplicants. Thus corporations now assume for themselves Plant Breeders’ Rights – with approval and legitimation by the state – while they in turn would grant farmers the *privilege* – as ‘farmers’ right’ – of saving their own seeds for a season. It is assumed, in this scenario, that plant breeding is a professional activity carried out in the formal sector of corporations, universities and public agricultural research

* The first Plant Patent Act was only passed in the USA in 1930.

** This ‘enclosure’ of the seed harks back to the enclosure of the village commons by the feudal lords of England in the 18th and 19th centuries.

institutions, while farmers, languishing in the informal sector, are apt to be deemed incapable of 'scientific' plant breeding, if only because of the cost. Under capitalism, they are tolerated (or even required as a source of 'genetic resources') but not valued.

In this context, plant breeders set themselves up as members of a professional scientific society with responsibility for defining their own credentials, standards and regulation. In so doing they appropriate the function of traditional farmers as plant breeders as well as seed savers and define custody and breeding of plants and crops as their professional prerogative (right) recognized by the state. Recognition of Plant Breeders' Rights also inhibits the development of collaborative farmer-breeder relationships by limiting access to and work with 'protected' varieties and proprietary germplasm by requiring licensing arrangements with the institutional and corporate rights holders. Fortunately, there are still some plant breeders employed in universities and government departments who regard themselves as working in the public sector for the good of farmers and the public.⁵⁸

Once formal seed breeders (and their employers) had captured plant breeding and seed propagation, they started to claim that it was their right to profit by such commercial enterprise. Then the traditional functions and practices of farmers were regarded as a threat and the traditional practice of seed saving was redefined as a privilege – a privilege granted by commercial seed 'owners' with state backing. The only remaining rights for the farmer are 'users rights', that is, the 'right' to plant, cultivate, harvest and sell the crop produced by the seed that essentially remains the property of its corporate owner. The farmer, then, effectively only *rents* the seed for a season.

Similarly, users' rights are now appearing in the language of the media conglomerates with reference to the

‘rights’ of the purchaser of a book or record to read or listen to the purchase they have made. Big Media now wants, in effect, to limit users’ rights by asserting perpetual ownership with the ability to collect royalties on every ‘re-use’ of what has already been purchased.

The assertion of Farmers’ Rights is intended to create the legal space for farmers to maintain these traditional practices in the face of efforts, by both states and corporations, to enclose this space and occupy it with hybrids, patented varieties and corporate agents while outlawing the traditional practices. Thus Farmers’ Rights are functionally a reactive claim for an exception to the capitalist laws of private property.

The idea of Farmers’ Rights^{*59} arose as a defence against the increasing dominance of Plant Breeders’ Rights (PBR) only after the establishment in 1961 of the International Union for the Protection of New Plant Varieties (UPOV)^{**60} that created the legal curiosity of Plant Breeders’

* “The subject matter of farmers’ rights are first and foremost traditional crop varieties, their wild and weedy relatives and the related knowledge and innovations of their custodians.”⁵⁶

** “The idea of farmers’ rights emerged from the debate on intellectual property rights (IPRs) on plant genetic resources (PGRs) in the early 1980s, as voiced in international negotiations. At that time, the signatories to the International Undertaking on Plant Genetic Resources of the United Nations Food and Agriculture Organization (FAO) discussed how they could attract the signatures of more countries, as this was [considered] pivotal to realizing the objectives of conserving these resources and making them available. Many Northern countries set the recognition of plant breeders’ rights (PBRs) as a precondition for joining the International Undertaking. However, many developing countries were opposed to it, seeing such rights as against the objectives of the Undertaking and, in addition, unfair, since plant breeders add only the final few links to the hard work and innovations that farmers, particularly in developing countries, have carried out for hundreds and thousands of years. The solution to this conflict was that PBRs were
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Rights. As late as 1983 there was still no documented mention of farmers' rights. While breeders' rights are now recognized by national legislation in many countries, so-called farmers' rights have not been given legal recognition.⁶¹ The UPOV Convention of 1961 established criteria for plant varieties (distinct, uniform, stable and novel) that gave plant breeders rights over (ownership of) the commercial propagation of their 'protected' varieties, but UPOV 61 does not restrict farmers from saving seeds or breeders from doing further breeding with the protected varieties.⁶² In 1991, however, UPOV was tightened up and the exceptions to Plant Breeders' Rights in the 1961 agreement were curtailed. Currently, some countries have signed on to UPOV 91, including the USA, while others, including Canada, have not, although the corporate seed industry lobbies relentlessly to get the government to sign on to it. New signers have no choice: they have to sign on to UPOV 91.*

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recognised along with farmers' rights by the FAO Conference in 1989."⁵⁷

* In August, 2009, the journal *Scientific American* published an editorial condemning corporate control over independent seed research, saying, "Unfortunately, it is impossible to verify that genetically modified crops perform as advertised. That is because agritech companies have given themselves veto power over the work of independent researchers. To purchase genetically modified seeds, a customer must sign an agreement that limits what can be done with them. [If you have installed software recently, you will recognize the concept of the end-user agreement.] Agreements are considered necessary to protect a company's intellectual property, and they justifiably preclude the replication of the genetic enhancements that make the seeds unique. But agritech companies such as Monsanto, Pioneer and Syngenta go further. For a decade their user agreements have explicitly forbidden the use of the seeds for any independent research. Under the threat of litigation, scientists cannot test a seed to explore the different conditions under which it thrives or fails. They cannot compare seeds from one company against those from
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In using, and in allowing the use of, the term Plant Breeders' Rights, farmers are, in effect, recognizing the authority and legitimacy of those who would deny them one of their major traditional customs, a foundation stone of their viability, and a necessity for public food sovereignty.

It is a stunningly opportunistic contradiction that those who claim formal ownership of seeds (and now 'genetics') and lobby for complete privatization of the seed sector also demand state protection of what they claim as their monopoly ('natural') rights, the rights of plant breeders being granted by the state and 'protected' by state legal systems and international treaties. Like all treaties, these are a form of contract law to protect the interests of the contracting parties, not the public as a whole, thus radically changing the character of seed and plant replication and use from public good to private profit.

Without the state there would be no Plant Breeders' Rights, no copyright and no patents. Farmers who save, select and use their own seed, on the other hand, neither have nor require such state 'protection' to go about their work, though they now have to face the threat and experience of having their own seed stocks contaminated by corporate-owned genetically engineered seeds, the corporate right to produce and sell such seed now being authorized by the state. This leaves the farmer having to appeal to the same state for protection from the activities of a corporation backed by the state. Regine Andersen, who provides a most careful and critical discussion of the development and use of farmers' rights, concludes that "Farmers' rights represent a strategic

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another company. And perhaps most important, they cannot examine whether the genetically modified crops lead to unintended environmental side effects. Research on genetically modified seeds is still published, of course. But only studies that the seed companies have approved ever see the light of a peer-reviewed journal."

instrument to create legal space within the legislative contexts in the various countries – to ensure that farmers' practices of maintaining agro-biodiversity can continue."⁶³ This argument is similar to that used by Latin Americans regarding human rights, as discussed earlier.

While in theory legal rights are intended to protect the interests and practices of rights holders, in the case of farmers' rights farmers are explicitly alienated from their customary practices as their rights "are vested in the International Community, as trustee for present and future generations of farmers."⁶⁴

The seed production protected by Plant Breeders' Rights is an integral part of industrial agricultural production. The traditional, and once universal, practice and culture of seed saving and plant breeding, on the other hand, can only be fully exercised within the context of a people whose identity and existence is recognized and respected – including subsistence farmers. Recognition of a people, tribe, clan etc. also requires recognition of and respect for the conditions which make its collective life possible, including land, language and traditional wild and culturally important foodways and the knowledge, passed on from generation to generation, that underlies all these practices.

A clear expression of traditional 'seed sovereignty' – the holding and taking responsibility for the seeds required for a self-sustaining food economy – is a Declaration of Seed Sovereignty by the New Mexico Acequia [irrigators] Association.⁶⁵ Making no mention of rights, it is simply a bold statement of intention concerning seeds:

21. Be it resolved by the traditional farmers of Indo-Hispano and Native American ancestry of current-day northern New Mexico [that we] collectively and intentionally seek to continue the seed-saving traditions of our ancestors and maintain the

landraces that are indigenous to the region of northern New Mexico.

22. Be it further resolved that we seek to engage youth in the continuation of the traditions of growing traditional foods, sharing scarce water resources, sharing seeds, and celebrating our harvests.

23. Be it further resolved that we reject the validity of corporations' ownership claims to crops and wild plants that belong to our cultural history and identity.

24. Be it further resolved that we believe corporate ownership claims of landrace crop genomes and patent law represent a legal framework for the justification of the possession and destruction of stolen cultural property.

25. Be it further resolved that we object to the seed industry's refusal to label seeds or products containing GE technology and ingredients and demand all genetically modified seeds and foods containing GE ingredients in the State of New Mexico to be labeled as such.

26. Be it further resolved that we consider genetic modification and the potential contamination of our landraces by GE technology a continuation of genocide upon indigenous people and as malicious and sacrilegious acts toward our ancestry, culture, and future generations.

30. Be it further resolved that the undersigned traditional farmers representing various acequia, Pueblo, tribal, and surrounding communities will create, support, and collaborate toward projects and programs focused on revitalization of food traditions, agriculture, and seed saving and sharing.

Following the making of this declaration, the New Mexico state legislature passed a motion

“recognizing the significance of indigenous agricultural practice and native seeds to New Mexico's cultural heritage and food security.”⁶⁶

To illustrate the importance of language and the choice of particular words, here is an analogous statement of another Indigenous group three years earlier followed by my rephrasing of it:

“We hold sovereign rights over our knowledge, biological diversity and its components. An international regime must expressly affirm the right of indigenous peoples to restrict and or exclude access to their knowledge ... Indigenous peoples are custodians of their Indigenous Knowledge and have the exclusive right to control and manage their knowledge.”⁶⁷

In my rewording of this, I have taken back the power and authority given by the language of rights to external authority:

We claim sovereign jurisdiction over our knowledge and biological diversity. Indigenous peoples are custodians of their Indigenous Knowledge and have exclusive responsibility for restricting or excluding access to their knowledge. An international regime must expressly affirm the authority of indigenous peoples to control and manage their knowledge.

If the concept and application of farmers' rights remains elusive, perhaps this is because farmers' rights is an unworkable – and to many, literally unthinkable – idea or concept because it is an alien cultural construct.^{*68} What we

* Here I must acknowledge the substantial, ongoing efforts to give real meaning to the concept of farmers' rights through the International Treaty on Plant Genetic Resources for Food and Agriculture. “The realization of Farmers' Rights is a cornerstone in the implementation of the Treaty as it is a precondition for the conservation and sustainable use of these vital resources in situ as well as on-farm. The Treaty
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need is state action to curb the predatory practices of the privatizers, the PBR and patent pushers, in the interests of the public good, present and future. It is ownership of the seed (and its 'genetics') as property that needs to be eliminated to make way for responsibility and care for the seeds and the knowledge that goes with them.

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recognizes the enormous contributions made by farmers worldwide in conserving and developing crop genetic resources. This constitutes the basis of Farmers' Rights. According to Article 9, governments are to protect and promote Farmers' Rights, but can choose the measures to do so according to their needs and priorities. Measures may include the protection of traditional knowledge, equitable benefit sharing, participation in decision-making, and the right to save, use, exchange and sell farm-saved seeds and propagating material. . . However, the understanding of Farmers' Rights and the modalities for their implementation is still vague."⁶⁵

57. See: *Who Owns Nature?* ETCgroup, November 2008, at <www.etcgroup.org/en/materials/publications.html?pub_id=707>
58. See Stephen Jones, 'Breeding Resistance to Special Interests', at <www.bioscienceresource.org/docs/sjones-Breedingresistance.pdf>
59. Regine Andersen, *The History of Farmers' Rights*, Fridtjof Nansen Institute Report 8/2005, Oslo
60. Regine Andersen, *Protecting Farmers' Rights in the Global IPR Regime*, Policy Brief No 15, South Asia Watch on Trade, Economics & Environment (SAWTEE) 2007
61. Regine Andersen, *The History of Farmers' Rights*
62. See Devlin Kuyek, *Good Crop / Bad Crop – Seed Politics and the Future of Food in Canada*, Between the Lines, 2007
63. Regine Andersen, 'Summary of Findings from Phase 1, The Farmers' Rights Project', Oslo, 2006
64. *Protecting Farmers' Rights in the Global IPR Regime - Policy Brief #15*, 2007, prepared by Regine Andersen, for South Asia Watch on Trade, Economics & Environment (SAWTEE), Nepal
65. Drafted by the Traditional Native American Farmers' Association (TNAFA) and the New Mexico Acequia Association (NMAA) in January, February, and March 2006. <www.lasacequias.org/programs/seed-alliance/seed-declaration/>
66. Senate Joint Memorial 38, 2007
67. 'Call of the Earth/*Llamado de la Tierra* – an indigenous peoples' initiative on intellectual property policy – workshop outcomes,' Como, Italy, November 2003
68. 'Farmers' Rights in the International Treaty on Plant Genetic Resources for Food and Agriculture', <www.farmersrights.org/about/fr_in_itpgrfa.html> accessed 14/8/09
69. Personal comments of Marcelo Saavedra-Vargas, University of Ottawa