Transnational Agrarian Movements, Food Sovereignty, and Legal Mobilization

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Political Economies of Law: Transnational Agrarian Movements, Food Sovereignty, and Legal Mobilization

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Abstract

In this chapter, we analyse a diversity of legal mobilizations by contemporary agrarian movements, from the creation of new human rights to direct participation in global food governance, the institutionalization of food sovereignty, civil disobedience, and peoples' tribunals. Our main argument is that there is a need to expand the scope and methods of research in law and anthropology to account for the diversity of actors and alliances, their innovative legal strategies, the different scales, and the multiplicity of institutional and extra-institutional arenas in which transnational agrarian movements engage with the law in their struggles against capitalism and neoliberalism. To document and analyse social movement innovations, lawyers and anthropologists must engage with transnational, multidisciplinary, and transdisciplinary approaches, and critically reflect on their methods, roles, and positionalities as social actors involved in social justice struggles.

Keywords: transnational agrarian movements, food sovereignty, legal mobilization, legal strategies, human rights, vernacularization, litigation.

Introduction

In the past two decades, transnational agrarian movements have emerged as new political actors. Composed of networks of organizations representing peasants, fishers, pastoralists,

agricultural workers, Indigenous Peoples, women and youth, these agrarian movements have advanced a radical food sovereignty agenda, one that demands at once the relocalization and repeasantization of our food systems (Desmarais 2007; Rosset and Martínez-Torres 2010). Much has been written about this movement of movements, arguably the largest and most dynamic social movement of our time, and its political struggles against neoliberalism and capitalism in agriculture, including against the World Trade Organization (WTO), genetically modified seeds, industrial modes of agricultural production, and market-based approaches to the governance of land and natural resources (Borras et al. 2008; McMichael 2014; Patel 2009; Wittman 2011).

These struggles increasingly have legal dimensions. In the age of globalization, violence increasingly takes legal forms, as opposed to the open use of force or political violence (Mattei 2003). In this context, resistance is increasingly articulated in the language of law (Randeria 2007), and even social movements that express radical critiques of the law often deploy legal strategies (Bereni et al. 2010). Legal actions are an important part of social movements' struggles, although they are often a secondary or supplementary strategy and are combined with other tactics (McCann 2008).

In this chapter, we analyse a diversity of legal mobilizations by contemporary agrarian movements, with legal mobilization understood as a process by which collective actors invoke legal norms, discourses, or symbols to achieve progressive social change[1]. These include *a priori* legal strategies, such as the framing of human rights claims, advocacy, and participation in policy-making; *a posteriori* strategies, such as litigation; and extra-institutional forms of legal activism, such as people's tribunals. Our focus is on how peasants and small-scale farmers' organizations engage with the law, while acknowledging that they

[1] Our interest lies in collective forms of mobilizations, as opposed to everyday politics (Kerkvliet 2009).

often operate through inter-sectoral and transnational alliances, coalitions, and networks involving other rural constituencies, NGOs, lawyers, and academics (Borras and Edelman 2016; Claeys and Duncan 2018b).[2] We mostly discuss struggles related to access to and control over land, seeds, and biodiversity, but we also cover issues such as trade liberalization agreements, access to local/territorial markets, and food safety standards.

Our objective is to show the diversity and complementarity of agrarian movements' efforts to reconstruct the 'legal dimensions of inherited social relations' (McCann 2008: 509), and assess the potential and limitations of these attempts. To this end, we build on useful concepts in the field of social movement studies, such as framing, political opportunities, resource mobilization, and collective identities (Benford 2011; Benford and Snow 2000; McAdam 1996; Tarrow 1996,). Researchers in this field analyse which legal tactics and practices are empowering or disempowering for social movements, highlighting potential pitfalls for movements engaged in legal struggles, such as professionalization, co-optation, and demobilization.[3] Well aware of these challenges, social movements constantly reassess whether institutional or disruptive tactics are more effective to advance their goals, and they try to find the right balance between the two (Tsutsui et al. 2012). They also assess how to combine litigation and legal or policy reform (Bereni et al. 2010).

We analyse cases of legal mobilizations at the transnational, national, and sub-national levels. The domestic arena remains the most relevant for legal activism (Tsutsui et al. 2012), considering the close interconnection between law and the liberal state. However, agrarian movements are increasingly organized at the transnational level, and they are actively seizing

[2] For a discussion of indigenous peoples and the law, see Chapters 13 and 14, in this volume.
[3] 'Professionalization' refers to how movements tend to internalize formal rules and forms of participation and rely on insider tactics at the expense of direct-action tactics, possibly giving up on more ambitious goals. 'Co-optation' means that movements risk being neutralized when they participate in formal processes because policy-making tends to follow pre-existing interests. 'Demobilization' is the risk of social struggles being taken off the streets to specialized legal arenas where they are only dealt with by a few (Tsutsui et al. 2012).

and creating new transnational 'legal opportunities' – the opening of institutional spaces allowing for legal changes.[4] This is either because such opportunities do not exist at the national level (Keck and Sikkink 1998) or because the inclusion of human rights principles in a growing number of international agreements offers new entry points to influence food and agriculture governance (Duncan 2015; Tsutsui et al. 2012). At the same time, the local or municipal level re-emerges as an arena for legal mobilizations (Blank 2006).

Our main argument is that there is a need to expand the scope and methods of research in law and anthropology to account for the diversity of actors and alliances, their innovative legal strategies, the different scales, and the multiplicity of institutional and extra-institutional arenas in which transnational agrarian movements engage with the law in their struggles against capitalism and neoliberalism. To document and analyse social movement innovations, lawyers and anthropologists must engage with transnational, multidisciplinary, and transdisciplinary approaches, and critically reflect on their methods, roles, and positionalities as social actors involved in social justice struggles.

Legal mobilizations take place in different phases of a social movement's life: from when a movement coalesces around shared claims and a collective identity, to when movement building is reinforced by legal opportunities to induce social change, or weakened by legal tactics which end up having demobilizing effects. Legal actions can seek to reimagine shared norms in new transformative ways, enforce official but ignored legal norms against existing practices, or try to import legal norms from another realm (McCann 2008). To reflect this diversity, we cover a wide variety of agrarian legal mobilizations, including : the creation of new human rights such as the right to land and the right to seeds at the UN

[4] The concept builds on Tarrow's 'political opportunity structures' (Tarrow 1998) but helps provide a better understanding of the role of legal strategies in protest, notably because movements engaged in legal mobilization are constrained in their interpretive schema as they must articulate their claims within preestablished legal categories (Doherty and Hayes 2014). The term 'judicial opportunity' is used in relation to litigation more specifically.

Human Rights Council (HRC); direct engagement in policy-making at the UN Committee on World Food Security (CFS); domestic legal processes to institutionalize the right to food sovereignty in Bolivia, Ecuador, Venezuela, Central America, Canada, the United States, and elsewhere; litigation around seeds and intellectual property rights in Colombia, Brazil, and India; and, finally, extra-institutional legal strategies such as people's tribunals and civil disobedience.

Most of the examples of legal mobilizations we discuss in this chapter are ongoing, and we are therefore unable to fully assess their legacy. While some legal mobilizations have positive legacies, others can fail to generate social change or even provoke a backlash from reactionary political forces. For this reason, we try to conduct research over long timeframes that enable us to identify short-, mid-, and long-term impacts, both on the policy and legal fronts, and on the movements themselves. Moreover, legal relations and norms tend to be double-edged, upholding status quo and at the same time providing opportunities for episodic transformations (McCann 2008). This calls for systematically considering law as both a strategic resource (that provides legitimization or offers alternative avenues for pursuing change) and a constraint (that excludes certain claims or certain actors, and defines who is or is not entitled to participate) (Jacquot and Vitale 2014). This realization guides the preliminary analysis we provide below.

The creation of new human rights: the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)

In December 2018, a new international legal instrument for the protection of the rights of peasants and other rural working people was adopted by the UN General Assembly (121 in favour, 8 against, 54 abstentions), following six years of negotiations at the UN Human Rights Council. The UN Declaration on the Rights of Peasants and Other People Working in

Rural Areas (hereafter UNDROP) and the process leading to its adoption are innovative is several respects.

First, the UNDROP recognizes new human rights. It grants peasants and other rural constituencies the individual and collective rights to land, seeds, water, and other natural resources, and the right to determine their own food and agricultural systems (recognized by some states as the right to food sovereignty – see below). The UNDROP marks an important evolution in international human rights law because it grants collective rights to groups that are neither Indigenous Peoples nor minorities, signalling the emergence of local communities as legitimate rights-holders. This evolution contributes to the development of a multicultural, cosmopolitan, postcolonial, and transnational human rights regime from below (Bob 2010; Claeys 2015; Eberhard 2011; Goodale 2009; Rajagopal 2003; Santos and Rodríguez-Garavito 2005).

Second, the process of negotiating the UNDROP was requested and initiated by La Via Campesina. Created in 1993, La Via Campesina is now composed of more than 164 organizations in 73 countries, and represents about 200 million farmers. Legal scholars tend to emphasize the roles of legal experts, lawyers, and diplomats in norm-making (Benhabib 2009), at the expense of grassroots conceptions of law and human rights. In contrast, the UNDROP represents an instance of transnational law-making by social movements. La Via Campesina internally discussed successive versions of its Declaration on Peasants' Rights between 1999 and 2008. In the midst of the 2007–2008 global food crisis, it decided to take the declaration to the UN. The movement secured alliances with other rural constituencies, human rights NGOs and states, and created the legal opportunity needed to push the process forward (Edelman and James 2011; Golay 2015; Vandenbogaerde 2017). In particular, La Via Campesina was able to count on the political leadership and commitment of Bolivia to

advance its radical agenda. The negotiation process was participatory, with strong involvement of agrarian movements (but no private sector involvement).

In the anthropology of human rights, vernacularization (also called localization) is understood as the process of appropriation and local adoption of globally generated ideas and strategies about human rights (Feyter et al. 2011; Golan and Orr 2012; Merry 2006). This literature analyses the role of human rights 'translators' or intermediaries, i.e., the networks of international leaders or cosmopolitan elites who know both sides, control information flows, and interpret human rights norms in different cultural contexts (Levitt and Merry 2009). The UNDROP offers a contrasting example because peasant movements did not appropriate a global idea and adapt it to their local contexts, but sought to inject their own conception of human rights back at the core of the UN human rights system to radically expand its boundaries (Claeys 2012). They did so in response to new threats associated with the neoliberal transformation of the countryside, such as the commodification of nature and the liberalization of agricultural trade.

As anticipated by Peggy Levitt and Sally E. Merry (2009), the active seizure of human rights by social movements is reshaping human rights themselves. A decade ago, they noted that movements 'make claims that are not necessarily in the law. They expand the domain of human rights by coming up with new rights and defining new issues' (Levitt and Merry 2009: 460). Their research also highlighted the 'advocacy dilemma': human rights are a politically powerful tool because they point to global universals, but this non-local dimension makes it difficult for organizations to establish local support. In contrast, with UNDROP, the 'local' – understood as peasant conceptions of their collective identity, work, relationship to the land, and responsibilities as guardians of biodiversity – is what gave the campaign for peasants' rights its potency.

More needs to be said about the role of translators in the UNDROP process. As we argued elsewhere, agrarian activists played a protagonist role, while benefiting from the support of specialized NGOs and academic allies (Claeys 2019). This support entailed facilitating access to the Human Rights Council, which is restricted to NGOs with accreditation from the UN Economic and Social Council (ECOSOC) that meet a number of criteria that are difficult for social movements to satisfy. It also entailed supporting the 'framing' of agrarian activists' claims in the technical language of human rights. This second aspect proved particularly important, as two understandings of human rights converged in a complex and contentious process of translation: rights as radical activist claims needed to be translated into rights as documents and doctrines for monitoring governments.[5] This required reframing activists' demands and ideas of rights into 'agreed language' to make them consistent with the existing body of international human rights norms and to get a majority of states to vote in favour.[6] This reframing proved to be particularly difficult and contentious for new claims such as collective rights to land, seeds, and other natural resources. With the negotiation of UNDROP, as with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the recognition of collective rights derived not from theoretical discussions but from social and political struggles, and it represented an epistemological inversion in the broader intellectual history of human rights (Goodale 2009).

[5] Levitt and Merry (2009) make a distinction between (1) human rights as law and (2) human rights as social project, i.e., as an idea that is mobilized by social movements to build civic awareness of injustice. The two involve actors with distinct trainings. The first group is made largely of lawyers, and the second of social activists.

[6] Agreed language is a term commonly used by diplomats to designate 'authoritative previous documents' that participants in the negotiations cite 'to advance their causes' (Ramli and Yahya 2014, 346).

Global food security governance and direct participation in policy-making: the Civil Society and Indigenous Peoples' Mechanism to the UN Committee on World Food Security

In 2009, in the aftermath of the 2007–2008 global food crisis, the UN Committee on World Food Security (CFS) was reformed with a view to becoming the foremost inclusive multi-stakeholder platform for the global governance of food security. Civil society actors were proactively involved in the reform process and in establishing the rules that would govern the Civil Society Mechanism (CSM), a self-organized body that facilitates the participation of a wide diversity of civil society organizations from around the world in the policy processes of the CFS.[7]

Over the past ten years, the CSM has grown into a recognized and legitimate actor within the CFS, and its contributions are valued by a wide range of CFS member states and participants, including international organizations, research institutes, philanthropic foundations, and the private sector. The CSM has developed complex governance mechanisms to organize the internal processes that enable participating organizations to reach common positions. It gives explicit priority to agrarian social movement voices, making a clear distinction between social movement organizations (recognized as ten distinct constituencies including small-scale farmers, pastoralists, fishers, and Indigenous Peoples), and NGOs (recognized as the eleventh constituency). A quota system further ensures that women represent at least 50% of all participants and that an adequate balance is kept between the 11 constituencies and between 17 sub-regions that make up the CSM (Claeys and Duncan 2018b). These elaborate governance mechanisms are designed to manage tensions between organizations that compete over material, discursive, and symbolic resources (Jacquot and

[7] The initial name of the Civil Society Mechanism was changed in 2018 to reflect and encourage the active participation of Indigenous Peoples' organisations in the Mechanism. The new name is Civil Society and Indigenous Peoples' Mechanism.

Vitale 2014). The priority voice given to social movements within the CSM, together with the right of the CSM to autonomous and independent organization within the CFS arena have helped civil society organizations navigate the risks of co-optation, institutionalization, and demobilization (Claeys and Duncan 2018a).

The fact that food producers are organized in transnational networks and have a say in global policy-making processes has important implications for research in law and anthropology. As we highlighted above, most of the literature places NGOs or experts in a key position of 'norm entrepreneur' or 'translator' at the interface between disempowered local communities and national and international NGOs (Merry 2006). The rise of transnational agrarian movements speaking with their own voices brings about a fundamental shift: it does away with the intermediary and empowers agrarian activists with new forms of agency (Gaarde 2017). NGOs and experts nonetheless continue to play important roles in policy-making arenas such as the CFS. Within the CSM, 'technical facilitators' support social movement activists in framing (or translating) their claims in the technical language suited for policy negotiations, and they also deal with logistics and facilitate dialogue among CSM participants. However, these trusted facilitators are chosen from allied NGOs as a result of political alliances (Claeys and Duncan 2018b), and the nature of their work has changed as a result of shifting power relations between social movements and NGOs.

The CSM's active involvement in the CFS has enabled agrarian movements to advance progressive human rights language in CFS outputs and to contribute to the development of new soft law instruments that contain important policy recommendations for agrarian struggles. The most important of these instruments are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (hereafter the Guidelines), which recognize the legitimate tenure rights of local communities and establish clear principles for their participation in decision-making that may affect their livelihoods.

According to the Guidelines, states should recognize and respect these rights, including informal and customary rights, and they should protect land rights holders in the context of land transfers, large-scale investments in land, and programs designed to adapt to and mitigate the impacts of climate change. States should also facilitate land reform where necessary (Committee on World Food Security 2012).

Although this instrument is non-binding, the fact that it was adopted by consensus, following a participatory negotiation process, gives it considerable legitimacy. In addition, CSM participating organizations have played an important role in facilitating implementation and monitoring of the Guidelines at the national level, through training sessions and dissemination campaigns (International Planning Committee for Food Sovereignty 2016). This is all the more remarkable in a context increasingly characterized by a total absence of state accountability that can only be compensated by a strong civil society. Stated differently, social movements are key to overcoming the weak enforcement capacity of international human rights instruments (Tsutsui et al. 2012). Research is only starting to analyse the challenges linked to the implementation and monitoring of CFS policies at the domestic level. We need further research on how global norms travel, on how they are translated and appropriated in different local contexts, and on the ways in which transnational participatory governance modifies otherwise well-documented processes of norm diffusion and translation (Zwingel 2012).

Finally, the CSM is noteworthy for having brought to the table contentious issues, such as agroecology, in an effort to politicize a multi-stakeholder platform that would otherwise refrain from challenging the status quo (Duncan and Claeys 2018). However, ten years after the reform, state attacks on human and women's rights, the growing influence of the private sector, and the increased emphasis on public-private partnerships make it increasingly difficult for agrarian movements to advance their agenda in this multi-stakeholder platform.

The rapid development of multi-stakeholder platforms in food security governance, while opening opportunities for agrarian movement participation, raises inextricable dilemmas for social movements always at risk of co-optation and of legitimizing hegemonic powers. This points to directions for future research on how dominant actors, such as the state and the private sector, experience, justify, and legitimize policy-making through multi-stakeholder platforms.

Food sovereignty policies at the domestic level: agrarian movements and the state

In the past two decades, a great number of agrarian movements have engaged with the state in an effort to institutionalize the right to food sovereignty. While food sovereignty is primarily about the ability of local communities to determine their own food systems, it also defends rights to food-producing resources without interference from the state. Scholars are only beginning to document social movements' efforts to turn food sovereignty into public policy, a long and contentious process that often brings about mixed results. The biggest challenge that movements face is to engage 'in the radical change that is at the heart of food sovereignty while creating the institutional spaces for deliberation and action to meet food sovereignty objectives' (Trauger et al. 2017: 2). Is it even possible to codify the claims of food sovereignty movements within the institutions of the liberal state?

Most accounts of agrarian movements' efforts to institutionalize food sovereignty highlight their difficulty in initiating a deep transformation of the food system and tackle issues of power, redistribution, and agrarian justice. Yet, several accounts point to the emergence of new inclusive, participatory, people-centred, and counter-hegemonic spaces for policy-making (Levkoe and Sheedy 2017). Ecuador adopted a new constitution in 2008 that declared food sovereignty a strategic goal, reflecting many of the proposals put forward by social movements linked to La Via Campesina. However, the implementation of food

sovereignty policies has so far proven elusive (Clark 2016). Giunta (2014) points to the tremendous potential of having food sovereignty as a collective and constitutionalized horizon, but also signals the irresolution of a number of conflicts, notably around land, and the complete incoherence of policies and programs that encourage agribusiness development, GMOs, and land markets. The execution of food sovereignty as a shared vision was left in the hands of the old structures and bureaucracy, and civil society actors lacked the capacity to take advantage of the political opportunity (McKay et al. 2014). Karla Peña (2017), who analyses the state-led participatory mechanisms that led to the approval of Ecuador's 2016 Land Law, concludes that grassroots participation made a clear impact on the content of the law, inducing a shift towards land redistribution to the landless. At the same time, social movements have criticized the law for not regulating land concentration and foreign land acquisitions. In a context marked by neo-extractivist populism, how the law will be implemented is uncertain, but the participatory law-making process clearly created spaces for the inclusion of historically marginalized groups (Peña 2017).

Similar tensions are reported in Bolivia and Venezuela, where 'state-sponsored' food sovereignty has opened up new political spaces, but where redistribution of power is at odds with a strong developmentalist state (McKay et al. 2014). In Bolivia, the new 2009 Constitution includes food sovereignty as a central element. Yet, a decade later, Bolivia has been unable to dismantle unequal agrarian structures and continues to rely heavily on resource extraction to fund its social protection programs. The state has reasserted control over natural resources and encouraged large-scale agriculture for export, undermining local autonomy (Cockburn 2014). A number of social movement actors voiced critiques of Morales' policies, and an overall assessment of his presidency suggests a high degree of co-optation by the state and a loss of autonomy among social movements (McKay et al. 2014). In Venezuela, a national food sovereignty effort, enshrined in state policy, was launched in 1999. This process

has agrarian reform as an important component, a direct outcome of peasant mobilizations. Schiavoni (2015) warns against analysing food sovereignty as a state-led effort, as this would fail to account for competing currents within the state and render invisible civil society actors' efforts to work both through and outside the mechanisms of the state, in collaboration with some and in antagonism with others. Civil society has been influential both in shaping state policies and in constraining politically conservative initiatives (Schiavoni 2015).

In her account of the elaboration of Nicaragua's 2009 Law on Food and Nutritional Sovereignty and Security, Wendy Godek (2015) highlights a number of factors that facilitated and impeded the institutionalization of food sovereignty. She suggests that diverse coalitions, direct grassroots participation, the commitment of a number of legislators, and close ties between movement activists and government officials all played a role in advancing legal change. Obstacles included discursive conflicts about the meaning of food sovereignty, private sector opposition, and tensions between the technical approach to food security advanced by international institutions such as the UN Food and Agriculture Organization (FAO) and the political food sovereignty framework pushed by civil society (Godek 2015).

While Latin America is clearly the region where agrarian movements have been most active in translating food sovereignty into policy (Wittman 2015), efforts are under way in a wide range of contexts, many of which have not yet been covered by academic research.[8] In Switzerland, the peasant organization Uniterre, a member of La Via Campesina, made use of a direct democracy provision that allows citizens to propose or modify a constitutional principle via a popular initiative (Vuilleumier 2017). The initiative was defeated in September

[8] Peru, Argentina, Guatemala, the Dominican Republic, El Salvador, Indonesia, and West Africa, for example, have legislation or, in the case of West Africa, regional integration frameworks supportive of food sovereignty efforts. The rights to food and food sovereignty were also included in the 2015 Constitution of Nepal, following advocacy by the All Nepali Peasants' Federation (ANFPa), which is a member organization of La Via Campesina.

2018 after 60% of voters rejected the proposed amendment in a referendum over concerns about its potential impact on the prices of agricultural products.

In Canada, about 3,500 people across the country participated in a grassroots process to develop a food sovereignty policy, the People's Food Policy (2008–2011). The process strengthened food movement networks, weaved a coherent discourse, and politicized those involved. Yet, its potential reach was constrained by its inability to align with other related struggles (e.g., labour, Indigenous Peoples) and by its white and middle-class leadership. Nevertheless, it inspired similar experiences in the UK and Australia, and demonstrated the potential of democratic alternatives for engaging people in policy-making (Levkoe and Sheedy 2017).

This limited overview would not be complete without acknowledging that legal mobilizations for food sovereignty increasingly target the sub-national level, with a focus on municipal governance. Food policy councils that seek to democratize policy-making around food are blooming in North America and Europe (Moragues Faus 2017). Community land trusts and cooperatives are attempting to support land preservation and facilitate access to farmland for peasant farmers through new commons (Monnier 2013). These initiatives innovate with legal schemes that reinvent 'local and vernacular rights' while contesting the legal frameworks – grounded in state sovereignty and free enterprise – responsible for their undermining (Gutwirth and Stengers 2016). Contestation also takes place in the area of food safety standards, which are increasingly designed for large-scale processing and international trade at the expense of residents' rights to produce and consume their own foods (Trauger 2017). As pointed out by Blank (2010), local governments are increasingly seen as vehicles for the implementation of global environmental or human rights norms because they have a unique, territorially-grounded capacity to assume governance roles. Yet, the potential of local

governments can only materialize if multiple jurisdictions coordinate and cooperate, rather than seeing their powers as negating each other (Blank 2010).

This is only a sample of the multitude of initiatives led or joined by agrarian movements that seek to turn protest into policy in many different parts of the world. Further research is needed on how local governments and global norms can be leveraged to build autonomous spaces against market and corporate power (Trauger et al. 2017); on how issues of class, exclusion and neoliberal constraints can be better tackled by the global food sovereignty movement (Alkon and Mares 2012); and on how actions at various scales reinforce each other to support social change (Iles and Montenegro de Wit 2015; Schiavoni 2016).

Litigation: court challenges to intellectual property rights by agrarian actors

The global expansion of intellectual property (IP) regimes in the era of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO-TRIPS) has opened up a new arena for legal activism. Indeed, the global imposition of US standards of IP protection in agriculture – or IP imperialism (Mattei 2003) – is increasingly encroaching on the socioeconomic and human rights of peasants and farmers. Seed activists have begun to fight back in the courts, as witnessed by the multiplication of lawsuits around IP and seeds worldwide, especially in the past decade. In this section, we present examples of legal challenges in which agrarian actors and their allies strive to establish the primacy of the public interest, food security, and collective rights to seeds over companies' private property rights.

Colombia offers a notable example of agrarian mobilization against seed enclosures. In 2012, the Congress of the Republic of Columbia passed Law 1518 to accede to UPOV 91, one of the requirements of a bilateral trade agreement it had signed with the United States.

UPOV – the International Union for the Protection of New Varieties of Plants – is an inter-governmental organization that enforces IP rights on plant varieties, known as plant breeders' rights. Its 1991 Act, UPOV 91, is the strictest to date: it approximates plant breeders' rights to those of a patent holder and restricts farmers' rights over protected plant varieties. The Colombian Free Seed Network (*Red de Semillas Libres*, RSL) – a network of grassroots and activist organizations committed to seed sovereignty – immediately challenged the law before the Constitutional Court on the grounds that it restricted farmer's rights to freely use, save, and commercialize certified seeds, and that it was enacted without previous consultation with Indigenous and Afro-Colombian communities. The RSL is an example of a social movement that privileges grassroots resistance but sees legal activism as a complementary strategy (Gutiérrez Escobar and Fitting 2016). In an unprecedented legal victory for civil society, the court declared Law 1518 unconstitutional. A majority of the Court found that the law violated the constitution because Indigenous and Afro-Colombian communities had not been consulted prior to its enactment, in spite of the fact that the law might affect their biodiversity, ecosystems, and agricultural practices and knowledge. It must be noted that the Court's objections were limited to the process by which the law was enacted, and that it did not rule on its substantive compatibility with the Colombian Constitution. This example illustrates well the challenges faced by legal activists who have to negotiate multi-scalar governance. On the one hand, the Constitutional Court ruling succeeded in stopping Colombia from joining UPOV 91 in spite of US pressure. On the other hand, the ruling did not extend to other UPOV91-based provisions already present in the domestic legislation (Gutiérrez Escobar 2017).

Another important area of litigation concerns challenges to the patents of biotech corporations over transgenic crop varieties. Litigation in Brazil and India provides two examples. In 2009, a class action was brought against Monsanto by the local rural union of

Passo Fundo in Southern Brazil, which represents large soybean farmers. The union asked the court to uphold the rights of farmers, as specified in the Brazilian Plant Variety Protection Act, to save seeds from their crops for replanting and to sell their harvest as food or raw material without paying royalties. A state federation of 350 local unions representing family farmers and rural workers soon joined the class action. In the polarized Brazilian agrarian landscape, this changed the profile of the case: no longer simply a dispute about profits among powerful economic actors, it came to encompass the rights and livelihoods of small farmers. In 2012, a civil court judge ruled in favour of the farmers, accepting their argument that Monsanto exhausted its IP rights when it licensed its technology to seed producers, and therefore, that it was not entitled to collect royalties upon harvest. Monsanto appealed and, in 2014, the appellate court overturned the first decision based on a narrow interpretation of domestic patent law, a decision reaffirmed by the Superior Court of Justice in 2019.

In India, a legal dispute has been building since 2015 over seed prices and royalties for genetically-modified Bt cotton. This conflict has been simmering since the mid-2000s in a number of cotton-growing states, where farmers' protests against the high price of Bt cotton seeds led the government to fix the maximum sale price of a packet of Bt cotton seeds under the Essential Commodities Act, hereby triggering a string of lawsuits by Monsanto. The conflict escalated following the election of the ultranationalist Bharatiya Janata Party (BJP) in 2014, with Hindu nationalist grassroots organizations opposed to both GM crops and multinational corporations gaining more leverage with the central government. In December 2015, the central government issued an executive order allowing the government to fix the maximum sale price of Bt cotton seeds and the percentage of royalties, which Monsanto immediately challenged before the Delhi High Court. One lawsuit filed by Monsanto against an Indian seed company for patent infringement led the Delhi High Court to revoke

Monsanto's Indian patent on Bt cotton in April 2018 in the first decision to examine the legality of patents on biotech seeds in India.[9]

Legal conflicts over intellectual property have mobilized diverse actors and led to unexpected alliances. In the highly polarized Brazilian countryside, the Passo Fundo class action represents a rare instance of two antagonistic sectors – family farmers and large producers – siding together in an alliance that gave momentum to the class action. In India, farmers' groups were the first to challenge royalties for Bt cotton, but they have since been side-lined as the issue has evolved into a legal dispute between the government and national seed companies, on the one hand, and Monsanto, on the other. The dispute has also led to contradictory alliances, with progressive food sovereignty activists and ultranationalist Hindu organizations both opposing Monsanto's aggressive pursuit of IP rights. However, food sovereignty activists are hesitant to engage in disputes over IP rights because they fear that this might ultimately contribute to legitimizing proprietary regimes in agriculture. They also consider that proprietary issues surrounding transgenic crops are less urgent than preventing their environmental release. This explains why they have not fully embraced these lawsuits.

These legal challenges are ongoing, and it is too early to assess their long-term impacts. However, they have already had important repercussions. The most relevant, from the perspective of our discussion, is that they have forced the judiciary in Brazil and India to examine the legality of biotech patents in the context of their respective domestic legislation, which in each case differs substantially from that of the United States. This is prompting the development of new legal interpretations regarding the patentability of plants life forms that depart from the pro-patent jurisprudence developed by the US Supreme Court (Peschard and Randeria 2019). The class action lawsuit by Brazilian rural unions represents the use of

[9] This decision was subsequently suspended by the Supreme Court, which instructed the Delhi High Court to conduct a full trial. The case was ongoing at the time of going to press in February 2020.

collective action by subaltern actors to question the practices of hegemonic actors (the state and industry) in the name of trade and technical-scientific soundness. In both Brazil and India, activists have used the courts to bring key legal documents into the public domain and to clarify a patent situation until then shrouded in secrecy. Most importantly, activists have challenged the imposition of US intellectual property standards in violation of constitutional rights and domestic legislation, such as the exclusions to patentability under patent acts, and the rights guaranteed to farmers under plant variety protection legislation. In doing so, they contest the global imposition of hegemonic IP norms and its concomitant erasure of human rights and national laws.

Peoples' tribunals: the International Monsanto Tribunal

Since the 1960s, people's tribunals have been an important extra-institutional legal strategy to document and denounce human rights violations. People's tribunals have been organized on a wide range of issues, from human rights violations in conflict and war zones to living wages, environmental justice, economic crimes, and debt. They are established outside formal state and international structures and challenge the historical state monopoly on law-making and interpretation. They also monitor the exercise of power by states, international organizations (the World Bank, the WTO), and private corporations in an effort to hold them accountable for their actions (Byrnes and Simm 2013). Building on this tradition, the International Monsanto Tribunal was held in The Hague in October 2016. The steering committee was composed of prominent public figures, and the initiative garnered widespread support, with over a thousand organizations signing on.

The Monsanto Tribunal was noteworthy in a number of respects. First, the organizers modelled the Tribunal on the procedures of the International Criminal Court (ICC). A team of legal researchers prepared detailed legal briefs on each of the six questions submitted to the

tribunal. Second, the victims of Monsanto's activities were invited to testify before the Court, an important innovation of the Rome Statute which established the ICC (Monsanto was also invited but declined). Over two days, the judges heard the testimony of 29 witnesses (both injured parties and experts) from 16 countries. One of the most important roles of people's tribunals is to provide 'a venue for the articulation and validation of claims and experiences where the official state-sanctioned system fails communities' (Byrnes and Simm 2013: 743). As the presiding judge, Françoise Tulkens, emphasized in her concluding remarks, this was one of the central objectives of the initiative (European Civic Forum and Foundation Monsanto Tribunal 2017). Third, the organizers invited legal professionals – prominent lawyers and former judges – to sit on the tribunal, and they insisted on the importance of ensuring the formality and decorum of a regular tribunal. A people's assembly was held in parallel to the tribunal with strong participation by social movements and civil society, including La Via Campesina member organizations.

The tribunal issued its advisory legal opinion on 18 April 2017. Citing international human rights instruments, the Tribunal concluded that Monsanto had engaged in practices that have negatively impacted the right to a healthy environment, the right to food, the right to health, and the right to freedom indispensable for scientific research. The last question of the terms of reference concerned the crime of ecocide, understood as 'causing serious damage or destroying the environment, so as to significantly and durably alter the global commons or ecosystem services upon which certain human groups rely' (International Monsanto Tribunal 2017: 11). This definition deftly positioned ecocide at the intersection of environmental and human rights law (Rouidi 2017). The tribunal concluded that Monsanto's activities could constitute a crime of ecocide if the latter were recognized in international criminal law. The tribunal recommended amending the Rome Statute to legally recognize ecocide as the fifth international crime against peace. However, the tribunal stated that this amendment would

only be effective if the Rome Statute were also amended to recognize the criminal liability of legal persons, foremost corporations.

The International Monsanto Tribunal is an example of how civil society is constantly experimenting with new forms of legal activism. It combined the strong symbolic power of people's tribunals with the moral authority of formal legal procedures, albeit extra-institutional and non-binding. Giovanni Prete and Christel Cournil (2019: 205) point out that there were connections between the Monsanto Tribunal and the civil proceedings against the Monsanto pesticide Roundup that were held around the same period in France and the United States, and therefore they conclude that 'opinion tribunals and "real" tribunals should not be regarded as separate arenas of mobilization'. The Monsanto Tribunal also combined advocacy for the implementation of existing socioeconomic rights and advocacy for the recognition of ecocide as a crime in international law.

Civil disobedience: land occupations and direct actions against GMOs

In different parts of the world, agrarian activists have also engaged in disruptive, direct, and illegal actions to defend their rights, often resulting in prosecution. In Brazil, the Landless Rural Workers' Movement (MST) is known for its use of tactical land occupations to put pressure on the government to expropriate unused private land and create agrarian reform settlements. Since a land occupation almost invariably triggers a repossession lawsuit, the MST has had to develop sophisticated legal strategies to defend rights to the land (Houtzager 2005; Santos and Carlet 2010). In one instance, the MST succeeded in fighting an eviction order by reframing the conflict as one between a company's right to private property and the families' right to a dignified and hunger-free life. In another instance, the MST obtained a high court ruling expanding the breath of direct action accepted as civil disobedience, therefore helping to de-criminalize the movement. The ruling determined that 'the MST land

occupations could not be considered a criminal act because there was no criminal intent' and that 'land occupations should be seen as exercising the rights of citizenship, particularly the civil right to pressure government to guarantee constitutional rights' (Houtzager 2005, 230). While this ruling was ground-breaking, the MST continues to be criminalized and to refine its legal strategies. This includes training its own lawyers so as not to depend on the services of external lawyers.

In France and the UK, anti-GMO movements (including the La Via Campesina member organization *La Confédération paysanne*) have engaged in the voluntary reaping of experimental GM plots as an offensive litigation tactic since the 1990s. Activists readily accepted arrest and tried to publicize court cases in an effort to initiate a public debate that they felt was otherwise lacking, effectively turning the courts into a debating chamber on GMOs (Doherty and Hayes 2014).

While the examples listed above highlight proactive engagement with criminal justice systems, it should be noted that most agrarian activists' encounters with the law are the result of unwanted prosecution. In the last two decades, criminalization of agrarian activists has been on the rise, and a UN report noted that human rights defenders working on land rights and natural resources are particularly at risk of being killed (Forst 2016; OBS 2013).

Concluding Remarks

The current period has been described as 'a dark time for human rights' (HRW 2019). Human rights are increasingly under attack, not only in practice (UN 2018), but also in theory (Hopgood 2013; Posner 2014). As human rights violations continue unabated, the ineffectiveness of international human rights law and the limits of state-centric human rights advocacy are more apparent than ever before. As a counter to this bleak assessment, the experiences documented in this chapter point to the continued relevance of legal and human

rights mobilizations for progressive social change. Indeed, transnational agrarian movements are not only seizing upon and vernacularizing human rights norms but actively creating new norms to address new attacks and challenges.

In a changing global political environment, it is difficult to anticipate what forms legal mobilization will take in the future. As Ian Scoones et al. (2018) observe in their analysis of contemporary rural politics, a 'new political moment is underway', characterized by the rise of authoritarian populism. Populist politics are likely to influence both the prospects for legal activism and the forms taken by legal mobilizations more broadly. The defining features of authoritarian populism are: the rise of protectionist politics and nationalism; highly contested national elections; growing concern over the 'mobile poor'; appeals for security at the expense of civil liberties; and the use of the state to increase surplus for a minority while abandoning its most vulnerable citizens (Scoones et al. 2018). One could add to this list the crisis of the judiciary. Indeed, in countries where populist politics are on the rise, such as Brazil and India, interference by the executive branch and overt political bias have undermined the legitimacy of judicial institutions in the eyes of the population and raised concerns over the weakening of democratic institutions and the rule of law. In addition, the election of right-wing governments has brought about the nomination of more conservative justices, lessening the chances that supreme courts will contribute to progressive legal change.

Authoritarian populism also has implications for legal activism more broadly. India is a case in point. In the late 1970s, the introduction of public interest litigation expanded the sphere of legal activism (Rajagopal 2007). However, with the rise of ultranationalist politics, the space for legal activism is shrinking. Human rights are being recast as a national security concern and a threat to the country's economic development (and foreign capital); the state has come down on foreign-funded NGOs; new corporate social responsibility regulations restrict the scope of NGO activities (and conspicuously exclude human rights); and, finally, a

shift toward venture philanthropy further reduces civil society's independence from the corporate sector (Bornstein and Sharma 2016). These trends are not isolated and echo similar developments in other countries around the globe. The rise of authoritarian populism thus represents an important new avenue for research in law and anthropology.

Another avenue for future research concerns the nature and challenges of politically engaged ethnography (Juris and Khasnabish 2013). A growing number of lawyers and anthropologists are taking active part in agrarian movement's struggles rather than studying or observing these from the sidelines. They develop reflexive, collaborative, and activist approaches to research in an effort to tackle power relations in the research process (Duncan et al. 2019). They recognize that social movements are active and reflexive co-producers of knowledge. In addition, they experiment with new fieldwork configurations, going beyond multi-sited research (Marcus 1995) to engage in 'networked ethnography', that is, fieldwork that is attuned to the complex and place-based meanings of transnational encounters. Jeffrey S. Juris and Alexander Khasnabish (2013) argue that only by becoming active practitioners can researchers grasp the dynamics, frictions, empirical issues, and theoretical insights that are at play in transnational activism. Militant ethnography is key to producing the critical understandings that may help us produce movement-relevant theory (Bevington and Dixon 2005) or even co-theorize with movement actors (Rappaport 2008). We share this perspective and see research with and *as part of* transnational agrarian movements engaged in legal change as a form of activism in itself.

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