

Book Review

Santilli, J. 2011. *Agrobiodiversity and the Law: Regulating Genetic Resources, Food Security and Cultural Diversity*. London: Earthscan.

Reviewed by Fulya Batur, Centre for the Philosophy of Law, Faculty of Law, Université Catholique de Louvain.

The book *Agrobiodiversity and the Law* constitutes an updated version of Juliana Santilli's doctoral research stemming from a project focusing on "Local Communities, Agrobiodiversity, and Traditional Knowledge in the Brazilian Amazon". Its main objective is to analyse the impacts of international and national legal instruments on agrobiodiverse farming systems and on the small-scale farmers who conserve and manage them. To that end, the author not only carries out a thorough examination of relevant legal frameworks regulating seed trade, intellectual property, access and benefit-sharing, she also explores the subject-matter through a wider lens, conceding, amongst other investigative approaches, specific consideration to the "commons movement". Following a multi-disciplinary preamble framing the importance of agricultural biodiversity for food security, nutrition, health and environmental sustainability, the author plunges into the descriptive analysis of relevant legal tools, from those governing modern seeds and traditional plant varieties, to those carving out intellectual property rights through plant variety protection or patents. The author also delves on the thorny issue of access to genetic resources and the sharing of benefits derived from their use through both agricultural and environmental law-making perspectives. As the focus of this study clearly lies on traditional farming systems, the author then lingers on farmers' and livestock keepers' rights before investigating singular features of agrobiodiversity governance, especially with regards to the protection of cultural heritage.

Opening the chapter dedicated to the "protected commons" through a description of the open source movement both in software and biology, the author attempts to establish links between agrobiodiversity law and the commons, around the examination of "unconventional" licensing mechanisms such as the Creative

Commons license. Having quite briefly highlighted arguments pertaining to the need for property frameworks, as well as those underlining the detrimental effects of multiple intellectual property rights over one resource, the author spends extensive effort on the alternative solutions that the “BioLinux” and the “General Public License for Plant Germplasm” represent. The practical implications and the obstacles surrounding the adoption of these regimes are examined quite thoroughly, while the foundations of scholarly engagements seeking “a balance between the monopolies promoted by IP law and the protection of common resources” and the premises upon which alternative solutions to resource management are built are swiftly investigated. The author rightfully stresses the need for “socially regulated commons” in the area of traditional farming, with a main critique directed towards public domain studies with regards to their disregard for local rules and institutions, as an undesirable interference within relations characterising indigenous or agroecological communities that “are already ruled by local institutions and networks”. The author thereon concludes that open access or other licensing mechanisms only make sense “whenever relations with external third parties are involved”, in the view of authorising or restricting certain actions and preventing misappropriation. From this overview of protected commons, the open access licenses clearly appear only as one dimension of the possible governance mechanisms for agrobiodiversity commons, as these mechanisms are not limited to the design of licensing terms. The innovative approach of commons’ scholarship cannot in this sense be solely seen as concerned with licensing strategies or the open access movement, but may also serve as a sounder understanding of indigenous networks and the preservation of cultural heritage that the author holds dear. The interface built in this book vis-à-vis the commons movement is, in this regard, a first step of the attempt to establish solid links between the preservation of cultural heritage and traditional agricultural systems, by providing the groundwork for a more in-depth institutional analysis of cooperation and collective identity.

Overall, the main appeal of this book is its comprehensive nature, dealing with all aspects of agrobiodiversity regulation, and especially encompassing a thought-provoking reflexion on the place of cultural and agricultural heritage within proprietary management schemes. Unlike literature solely focused either on intellectual property, access and benefit-sharing or the protection of traditional knowledge, the author actually attempts to build rigorous bridges between these topics to reach a balanced legal framework around the protection and use of agrobiodiversity in traditional farming systems, with an innovative emphasis on the cultural commons that genetic resources represent.