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 Printed at St. Peter's Press, Muenster, SK

union farmer monthly

# Major victory on GM wheat

**M**onday, May 10, the radio news announced: “Monsanto will discontinue breeding and field level research of Roundup Ready wheat.” Monsanto’s news release said that it was “deferring” further efforts to introduce genetically-modified (GM) Roundup Ready wheat. Although the corporation and its Canadian spokesperson, Trish Jordan, wouldn’t admit it, Monsanto’s decision was prompted by growing global opposition to GM wheat. In Canada, the NFU took an active lead role in helping farmers and others understand the true costs of Monsanto’s wheat (please see related story cataloguing NFU actions).

In backing away from wheat, Monsanto tried to save face and shore up share prices by claiming that it was simply “realigning” its research efforts to focus on other crops. Monsanto claimed that it was making its decision because there just isn’t enough wheat planted anymore—Monsanto cited a decline in Canadian and U.S. wheat acreage of 25 % since 1997 (1997 was a peak year for wheat acreage and, generally, Monsanto’s “25%” claim doesn’t hold up). Since wheat is the only one of the big three North American crops—wheat, corn, and soybeans—that hasn’t been commercialized in GM form, Monsanto’s logic—that there just isn’t enough wheat acres to bother with—begs the question: Which crops will they focus on?

In reality, Monsanto backed down, not because of declining wheat acreage, but because of an organized, effective, and sustained campaign mounted by a broad and growing coalition of farm, citizens’, health, and environmental groups. The strong Canadian coalition to stop GM wheat—like the successful coalition to stop Monsanto’s GM milk hormone, rBGH—brought together a diverse range of rural and urban organizations, activists, academics, politicians,

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## Schmeiser case lost: Supreme Court sets dangerous precedent

**O**n May 21, the Supreme Court of Canada ruled in favour of Monsanto in a narrow 5-4 decision, ending the long saga of Monsanto vs. Percy Schmeiser.

NFU Vice-President Terry Boehm sat beside Percy Schmeiser and his lawyer Terry Zakreski in a Saskatoon news conference organized by the Council of Canadians and chaired by the Council’s Nadege Adam. Boehm told the media that “the Supreme Court decision moves us further along the path where corporations will control seed and farmers will lose the right to save and re-use their own seeds.”

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### IMPORTANT EVENTS

- NFU REGION 7 CONVENTION—June 24, 2004 at Duhamel, Alberta
- NFU REGION 6 CONVENTION—July 6th & 7th, 2004 (location TBA)
- NFU REGION 5 CONVENTION—July 24th, 2004 (location TBA)
- NFU REGION 3-ONTARIO “FEAST OF FIELDS”—August 29, 2004 at Cumpson’s farm west of Inverary, Ontario (see page 4 for more details)

## Bee imports bring disease risks

Opening our border to imports of U.S. bees would harm beekeepers economically and create public health risks said a May 4 NFU news release. At issue is a plan by the Canadian Food Inspection Agency (CFIA) to open the Canadian border to the import of U.S. queen bees and their attendants. Such imports have been banned since 1987.

In a brief to the CFIA, NFU Women's President Karen Pedersen said that while the Canadian beekeeping sector is generally economically viable and relatively disease-free, a proposal to change the federal Honeybee Importation Prohibition Regulations could reverse those trends virtually overnight.

1987 import restrictions were put in place because the varroa mite was widespread in U.S. honeybee stocks and posed a significant threat to Canadian hives. Despite a slight decline in the number of Canadian beekeepers and hives in the years immediately following the 1987 border closure, the Canadian honey sector has rebounded strongly to the point where it is in better shape than its U.S. counterpart.

Not only have many U.S. honey farmers been hurt by diseases, they are also burdened by the spread of Africanized ("killer") bees in the southern states.

Africanized bees were accidentally released in Brazil in 1956 and their descendants have steadily expanded their range. Africanized bees are extremely aggressive, responsible for several human deaths. While these bees cannot survive the cold Canadian winter, the annual importation of U.S. queen bees which are descended from (or have mated with) Africanized bees, or the future movement of entire colonies by migratory operators, pose a real health threat to Canadian beekeepers and others. Opening our border increases the risk of Africanized bees coming into Canada, creating the potential for very serious liabilities.

Canadian beekeepers have found that raising and breeding their own queen bees gradually improved the genetic quality of Canadian bee stocks over the past 17 years. These home-grown queens improved average honey yield and are achieving widespread market acceptance in both Canada and the U.S.

Canadian bee stocks are relatively healthy with an abundant supply of queens produced by breeders in this country. "There is no need at this time to lift the restrictions on queens and attendants from the continental US. Any economic benefits to producers will be more than offset by the costs," concluded Pedersen. — nfu —

## Ontario budget provides little to offset environmental compliance costs

The Ontario government released its budget May 18. That budget committed the government to spend \$20 million over two years to help farmers cover the costs of complying with the provincial Nutrient Management Act. While this money is welcome, the amount falls short, according to Don Mills, Ontario Coordinator of the NFU.

If the government's \$20 million were distributed equally to Ontario's 50,000 farms, each would receive just \$400. "That amount would probably buy a wheelbarrow, a few manure forks and shovels, and not a lot else," Mills said. He estimated that the overall costs of compliance could easily amount to tens of thousands of dollars per farm.

Mills said that the Nutrient Management Act costs come just as cattle farmers are reeling from the BSE crisis. He rejected the notion that farmers should shoulder the burden of compliance. "The Nutrient Management Act obliges farmers to implement measures designed to protect the environment. Because these measures are aimed at benefiting society as a whole, it is appropriate that society should share in the overall cost," said Mills.

The NFU is also working to ensure that public funds for environmental compliance will be capped and targeted to small and medium-size family farmers to ensure that large industrial operations do not make off with the bulk of the available assistance.

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# Nine things farmers need to know about the Seed Sector Review

*The following is a version of a four-page flyer that the NFU has prepared to educate farmers and policy makers about the Seed Sector Review process. You can obtain copies of that flyer by contacting the NFU office.*

**O**n May 5, the Seed Sector Review released its *Report of the Seed Sector Advisory Committee (RSSAC)*, the final report of the Review's phase one. (See [www.seedsectorreview.com](http://www.seedsectorreview.com)) Few farmers have heard of the Review—an ambitious, industry-led initiative to restructure Canada's seed and grain quality assurance systems. Begun in 2003, the Review is a joint venture of the Canadian Seed Growers Association (CSGA), the Canadian Seed Trade Association (CSTA), the Canadian Seed Institute (CSI), and the Grain Growers of Canada (GGC) (see sidebar for membership lists).

Review participants initially identified three objectives: “Regulatory flexibility and timeliness; supportive environment for science and innovation; and profitability of the sector.” The first objective translates to “deregulation” for the companies involved, and Review documents detail plans for deregulating our seed and quality assurance systems. The third objective is refreshingly clear: more profit for seed companies. And the second objective—a “supportive environment for science and innovation”—is largely a restatement of the first and third goals: A “supportive environment” for seed companies is one that is more profitable and less regulated. The Seed Sector Review proposes removing rules that protect farmers and introducing new rules designed to *restrict* farmers and to increase the profits of corporate seed developers such as Monsanto and a dwindling number of seed growers.

**The proposals and directions outlined in the Review's May 5 Report have wide-ranging and costly implications for farmers.** Review participants plan on using farmer, public, and industry money to create a “permanent, industry-wide consultative body” that will

The CSTA's 165 members include Agrico United/Proven Seeds, BASF, Bayer CropScience, Dow AgroSciences, Monsanto, Pioneer Hi-Bred, Saskatchewan Wheat Pool, and Syngenta Seeds.

The GGC is an umbrella group for the Western Canadian Wheat Growers, Alberta Barley Commission, Atlantic Grains Council, Canadian Canola Growers, Ontario Corn Producers, Ontario Soybean Growers, Saskatchewan Canola Growers, Western Barley Growers, and others.

consolidate and implement their ideas and proposals. Below are nine points that farmers should be aware of.

1. **Collect royalties on farm-saved seed**—The Review's Report examined ways to collect royalties from farmers who save and re-use their own seed. The Report notes: “Suggestions were made that royalties could be collected through elevators or seed processors or through CWB contract programs.” (RSSAC, pp. 33 & 41) Royalties collected on farm-saved seed will go mainly to big companies, not to farmer seed growers. Review documents are clear on this point: more money is needed for “research.” That means most of the money will go to the corporations that develop seeds, not to the farmers who propagate them.
2. **Compel farmers to buy Certified seed**—The Report lists ways that farmers could be “encouraged” to purchase more Certified seed. These include initiatives to “Link crop insurance premiums with the use of Certified seed” (RSSAC, p. 41)—requiring higher premiums from farmers who do not use Certified seed, presumably irrespective of a farmers' actual risk level or yield history. In a previous report, the Review suggested that farmers who did not purchase Certified seed might be denied crop insurance altogether. (Seed Sector Review, 2<sup>nd</sup> Meeting of the Industry Advisory Committee, p. 11.) Another option to encourage Certified seed sales was that “CWB contract programs should be based on the use of Certified seed.” (RSSAC, p. 41).
3. **Terminate the right of farmers to sell common seed?**— While they did not reach consensus, Review participants repeatedly returned to the idea of requiring the use of variety names on all seed sales. Because such a move would effectively outlaw the sale of “common” seed, farmers would lose the right to sell seed to neighbors or family members.

Requiring all seed to be sold by variety name, however, requires many supporting regulations

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## Action needed on anniversary of BSE crisis

**T**he U.S. closed its border to imports of live Canadian cattle on May 20, 2003. One year later, chronically-depressed livestock prices, rising costs, pressure from creditors, and dwindling feed supplies have pushed many cattle farmers to the wall.

“The herd size in Canada is steadily growing. It is time the federal government took serious action to alleviate the crisis,” said NFU Alberta Coordinator Jan Slomp in a May 19 NFU news release.

Statistics Canada’s early January estimate of calves on farms put the numbers at 4.97 million head—up 13% from the previous year. Since January, a spring calf crop has added to the total, with most calves being held off the market in hope of higher prices.

Slomp said that if the U.S. does not open its border by June 1, the federal government must immediately step up to the plate. “We need to close our border to all beef imports from the U.S., establish a domestic floor price for finished cattle so farmers can get a decent return from the marketplace, and begin a process of reducing the cow herd to bring production back into line with consumption.” He said culling the overall herd would involve slaughtering as many animals for commercial markets as possible, as well as utilizing food aid programs domestically and abroad.

NFU Livestock Committee Chair Don Mills said that a floor price for packer purchases would help ensure that farmers received the same portion of the retail beef dollar that they received before the BSE crisis.

NFU member Dale Fankhanel of Alberta said family farmers who raise beef calves are suffering severe cash flow problems as a result of the ongoing weak market prices. The NFU estimates cow-calf farmers have lost about \$250 per calf marketed, and the increasing glut of animals is leading to even heavier downward pressure on prices.

The NFU is also pressing for diversification of export markets and cultivation of the domestic Canadian market to alleviate the over-dependence on an unreliable U.S. market.

“The farmers’ interests are not the same as the packers’ interests, and it’s time the federal government put some concrete long-term measures in place so farmers can get a better return from the marketplace. The border may not open until next November or December, and farmers cannot wait that long. They need a solution now,” concluded Slomp.

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## Ontario NFU Local to hold “Feast of Fields” to celebrate harvest

**O**n Sunday, August 29, between 1:00 and 4:00 PM, at Sonset Farm, just west of Inverary, Ontario, NFU Local 316 will hold the first annual Feast of Fields. The public is invited to taste food; tour the farm; and talk with farmers, chefs, and others interested in supporting locally-grown products.

“We want people to connect with the land, enjoy real food, and raise their awareness of food issues that affect all of us,” said Andrea Cumpson, NFU Local 316 President and co-chair of the event. “We hope that people will leave the Feast of Fields inspired to learn more about local food sources.”

Co-chair Sharon Freeman, of Battersea, said: “We have had a great response from farmers and chefs already, but we welcome others to participate, to offer a variety of foods and ways of serving them.”

An important part of the afternoon will be the opportunity for visitors to walk in the gardens and fields and see farm animals and crops.

The tickets price is \$10, with children under 12 admitted free, and a maximum charge for a family of \$30.

For more information, call Sharon Freeman (613) 353-6889 or Andrea Cumpson (613) 353-2260.

# Redefining 'property': Intellectual Property, the Commons and the Public Domain

—By Brewster Kneen

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**T**he pervasive culture of turning anything and everything into commodities that can be bought and sold is squeezing the space for common ownership. Exploitation for private gain has systematically diminished the commons and the public domain. This is happening not only in the case of tangible goods such as public services utilities and public spaces such as parks and even highways, but also with the more intangible goods of ideas and information, now increasingly referred to as “*intellectual property*”. We are all impoverished as a result. “*In the end,*” as law professor James Boyle puts it, “*the public domain is whatever intellectual property is not.*” He goes on to say, “*You have to be a lion- or jackal-lover of truly limited imagination or unlimited commitment to argue that gazelles are to be understood as no more than whatever is left over after their adversaries have finished feeding.*”<sup>1</sup>

But it is essential to recognise, particularly at a time when ‘government’ is systematically reviled and its social justice and social welfare mandate is degraded and deconstructed, that intellectual property is a social construct. This means that is dependent for its meaning, legality and application on a strong central government and a legal system willing to enforce and extend the domain of private property at the expense of public good.

## The relentless advance of private property

For the past three hundred years or so, industrialised societies (or at least the class of tangible property owners within them) have become increasingly preoccupied with property, its privatisation, and its ‘protection,’ meaning the accumulation of capital and control. The debate about property ownership has been framed as being between enclosure and commons, private property and public property. The ideology of personal (and now corporate) greed has become the unquestioned driver of the economy, with its assumption that humans are motivated only by the prospect of acquisition, and that progress results solely from

increased production and consequent economic growth. Any semblance of a common/public property regime is simply a block, if not an enemy, to wealth and progress.

Over the past two decades many of us have criticised the concept and application of intellectual property rights on moral, spiritual and intellectual grounds. We have objected to the part they play, for example, in the relentless erosion of traditional practices of seed saving and medicine, accompanied by the theft of plant, animal and human genetic material, to say nothing of laying claim to the knowledge of indigenous peoples. All of this has been rationalised as reasonable activity by first conceptually reducing plants, animals and people to ‘genetic resources’ and then making this socially acceptable by labelling them ‘the common heritage of humanity.’

The corporate and governmental pirates engaged in this ‘resource’ exploitation claim that it is in the public interest that they do so on the grounds of the public benefits of the products – mostly drugs – they promise to produce from these ‘resources.’ While they demand extensive state intervention to protect what they regard as their ‘intellectual property,’ they do not appear to consider it unreasonable to demand increasing limitations on any state or community action in the public interest or for the public good.

## A failure in imagination

Granting patents on plants, seeds, genes, gene sequences, ideas, data and information has accelerated dramatically in the past decade. But proponents of the public domain, public good, the commons, and community life seem to have been unable to gain any significant leverage on the institutions of domination and exploitation. We have allowed ourselves to be confined in a straitjacket of limited imagination and narrow concepts, and have failed to get to the root of the issue. Our language and analysis has not been sufficiently historically informed and incisive, and relies too much on slogans and emotional appeal. We have

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media workers, and citizens. If Monsanto's May 10 announcement turns out to be a long-term victory, it will represent the victory of intentional and organized citizen action over corporate power and government irresponsibility.

But while May 10 is a clear victory, Monsanto's announcement does not mark the end of the struggle. Monsanto will continue to manoeuvre, to look for opportunities to introduce GM wheat and other GM crops. The NFU will continue to work hard. The NFU has already initiated efforts to ensure that Monsanto withdraws its GM wheat application from the Canadian Food Inspection Agency's approval process. The NFU is also asking the CFIA to terminate the open-air planting of GM wheat in test plots in Canada. And the NFU is asking for assurances that the GM wheat seed supply will be isolated and kept far from commercial seed or food stock. The NFU will work to make Monsanto's deferral of GM wheat permanent.

Monsanto, Bayer, Syngenta, and other GM seed companies are making tactical retreats on many fronts worldwide:

- *On October 15, 2003, Monsanto announced that it was pulling out of the European cereals and seed business and selling its cereal research stations in Cambridge, England and in France, Germany and the Czech Republic.*

- *On March 31, Bayer Cropscience shelved plans to commercialize GM corn in the UK. It appears that the UK will be free of GM crops until 2008 at the earliest.*
- *On May 12, 2004, just two days after announcing its decision on GM wheat, Monsanto announced that it would close its program to introduce GM canola into Australia.*

These moves may indicate progress in farmers' struggle to curb agribusiness power. Or, these moves may simply be part of a tactical repositioning by seed transnationals—a prelude to a renewed push to introduce new GM seeds, especially in developing countries. Whether, ten years from now, we are dealing with a proliferation of GM varieties or whether we have pulled back from the ill-conceived GM food experiment will largely depend on the continued vigilance and action by the NFU and its global allies. One thing is clear, however: Around the world, farmers and citizens are saying “no” to industrial food and to corporate control of our fields and seeds. NFU members will continue to work toward a model of agriculture that draws its inspiration from nature, and not from the factory, and a model of agriculture where farmers, and not Monsanto, exercise control and reap the returns.

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## A catalogue of NFU actions on GM wheat

**N** *FU members and officials have been active in raising awareness of the costs of genetically-modified (GM) wheat. The following is a summary of some of our work.*

### Year 2000

December 2, 2000—At its annual Convention, the NFU adopts the most comprehensive and progressive policy on GM foods of any farm organization in Canada. That policy calls for “a moratorium on the production, importation, distribution, and sale of GM food until questions regarding consumer acceptance, human health, environmental implications, technology ownership, and farmer profitability are answered to the satisfaction of the majority of Canadians.” See [www.nfu.ca](http://www.nfu.ca) for a copy of that policy.

### Year 2001

February 9, 2001—The NFU sends letters to key organizations outlining the threat of GM wheat and asking them to work in coalition.

July 31, 2001—The NFU, Saskatchewan Organic Directorate (SOD), Greenpeace, Council of Canadians (C of C), Canadian Health Coalition (CHC), Agricultural Producers Association of Saskatchewan (APAS), Keystone Agricultural Producers (KAP), Saskatchewan Association of Rural Municipalities (SARM), and the Canadian Wheat Board (CWB) hold a huge joint news conference in Winnipeg, Manitoba. The organizations unveil a letter to then Prime Minister Jean Chrétien signed by over 210 organizations asking the PM to “prevent the

*(continued on page 7...)*

introduction of GM wheat into Canadian food and fields unless the concerns of Canadian farmers, industry, and consumers are adequately addressed.” NFU President Stewart Wells chairs the news conference.

November 8, 2001—The NFU and its allies from the July 31 news conference hold a second news conference (this time in Ottawa), meet with advisors to the Prime Minister, and make presentations to the Senate Standing Committee on Agriculture and Forestry.

October 2001—NFU Vice-President Fred Tait represents the NFU on a Canadian Wheat Board-led “Grain Industry Working Group on GM Crops.”

## Year 2002

January-March, 2002—The NFU enters into a series of meetings with and letters to the Canadian Food Inspection Agency (CFIA) designed to determine how and why references to marketing risks were deleted from the Variety Registration system. The NFU states that those deletions were made in order to facilitate the introduction of GM wheat.

May 31, 2002—NFU officials participate in a federal conference on food safety regulation in Aylmer, Quebec and tell delegates that new government regulations must ensure that companies like Monsanto are forced to stop downloading the costs created by GM crops onto farmers.

## Year 2003

January 17, 2003—In a number of venues including a presentation to the Munk Centre, University of Toronto and at meetings in Brazil and in Europe, NFU Vice-President Terry Boehm criticizes the patenting of seeds and outlines farmers’ interests with regard to so-called “intellectual property rights.”

February 2003—The NFU distributes its two-page flyer: “Ten Reasons Why We Don’t Want GM Wheat.”

February 6, 2003—The NFU co-sponsors an Oxfam Canada event: “GMOs Around the World: Who is Profiting?” Other co-sponsors include the Sierra Club, SOD, and the C of C. Nettie Wiebe speaks on behalf of the NFU.

February 24, 2003—The NFU holds major news conference in Saskatoon urging farmers: “If you don’t want GM wheat, don’t buy Roundup.” NFU President Stewart Wells is joined in front of the cameras by members Ron Watson and Lyle Simonson while several other NFU members attend the news conference and answer media questions.

February 26, 2003—The NFU, Parkland Institute, Council of Canadians, and SOD kick off an 11-city “Seeds of Doubt” tour on GM wheat. Tour stops include Winnipeg, Manitoba; Melville, Humboldt, Saskatoon, Rosetown, and Swift Current in Saskatchewan; and Medicine Hat, Red Deer, Camrose, Edmonton, and Grande Prairie, in Alberta.

March 2003—NFU President Stewart Wells outlines the problems with GM wheat to an Atlantic Grains Council meeting in Fredericton, New Brunswick.

March 22, 2003—Andrea Cumpson and other NFU members and officials in Ontario help organize a Public Forum on GM crops near Kingston.

March 2003—NFU runs radio ads on GM wheat. The NFU asks members for donations to fund further ads. Several members send in cheques totalling nearly \$1,300.

April 15, 2003—The NFU, Oxfam, Greenpeace, C of C, CHC, and SOD sent a letter to then Minister of Agriculture Lyle Vanclief asking that he stop the environmental release of GM wheat.

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(Catalogue of NFU actions, from page 7)

May 1, 2003—NFU officials meet with Western Australian government officials to discuss GM crops including wheat.

June 2003—In a series of briefs and letters to Monsanto and government regulators, NFU President Stewart Wells works persistently to bring forward emerging research that link the spread of the plant disease fusarium with the application of glyphosate—the active ingredient in Roundup. The research indicates that, because GM Roundup Ready (RR) wheat will require dramatically increased application of glyphosate to wheat, RR wheat will probably spread and intensify fusarium.

June 4, 2003—NFU President Stewart Wells meets with top Canadian trade negotiator Steve Verheul to discuss the WTO and NAFTA implications of a federal government decision to block GM wheat.

June 5, 2003—NFU President Stewart Wells and Vice-President Terry Boehm appear before the House of Commons Standing Committee on Agriculture to discuss GM wheat and deliver an NFU brief.

June 5, 2003—NFU former Vice-President Fred Tait joins activists from Greenpeace to protest at the Agriculture and Agri-Food Canada research station at Morden, Manitoba. That station is one of several conducting open air field trials of GM wheat. Protesters climb onto the roof of the research station and unfurl a large banner reading “Stop GM wheat.”

July 28-30, 2003—The NFU and SOD host Michael Meacher—former UK Environment Minister fired by Tony Blair for Meacher’s cautious approach toward the introduction of GM crops into the UK. Meacher’s news conference in Saskatoon with NFU officials generates wide coverage. The NFU organizes town hall meetings for Meacher.

July and October 2003—The NFU sends two delegations of farmers to the United Kingdom to help farmers there understand the realities of GM crops. NFU representatives include Stewart Wells, Wayne Amos, Lyle Wright, Dave Bailey, and Jim Robbins.

December 8, 2003—NFU members including Ken Marris join with activists from the Polaris Institute, Sierra Club, and the Ecological Farmers Assn. of Ontario to stage a protest at then Agriculture Minister Lyle Vanclief’s Bellville Riding office. Protesters present Vanclief’s staff with a GM-wheat-free loaf of homemade bread and a large Christmas card asking Vanclief to reject Monsanto’s GM wheat and to grant all Canadians “a GM-Free Holiday and New Year.”

## Year 2004

January 22, 2004—NFU Youth Vice-President Nigel Weber’s feature op. ed. entitled “GM wheat will affect pocketbook” runs in the *Western Producer*.

March 19, 2004—At a Regina news conference, the NFU, Greenpeace, SOD, and Canadian Organic Growers announce an ad campaign for major daily newspapers and ag. papers. The ads read: “The greatest threat to wheat farming isn’t hail or drought: It’s Roundup Ready wheat.” And the ads urge citizens to contact influential MPs. The *Western Producer* refuses to run the ads.

April 1-17, 2004—NFU Women’s Vice-President Colleen Ross campaigns against GM wheat and other crops in Australia. Ross meets with heads of farm organizations, the Australian Wheat Board, and trade negotiators.

May 10, 2004—Monsanto announces a freeze on GM wheat breeding and field research.

In addition to the above actions, NFU members have sent dozens of letters and attended dozens of meetings to further our work to stop the introduction of GM wheat. NFU members have made generous financial contributions to our work. Every NFU member should be proud of his or her role in the struggle over GM wheat. By helping to stop GM wheat, NFU members have helped avoid billions of dollars in losses for Canadian farmers.

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*(Schmeiser case lost, from page 1)*

Boehm and the NFU believe that the Supreme Court decision is just one more step in a deliberate plan to deprive farmers around the world of their fundamental historic right to save and re-use their own seeds. In a series of moves—Plant Breeders' Rights (PBR), patenting of life, seed contracting, the privatization of seed development, and the corporatization of our universities—seed and chemical giants have for years been chipping away farmers' right to save seeds. The Schmeiser decision is another step along that bleak path. And on the horizon, Canada's Seed Sector Review threatens to terminate once and for all one farmers' rights to their seeds (see feature article on the Seed Sector Review in this issue). "Increasingly stringent Plant Breeders' Rights and narrow and pro-corporate interpretations of patent rights, as the Court has done in this case, will cause farmers to lose ownership of seeds and ultimately become mere renters of corporate seeds," explained Boehm.

The Schmeiser decision has important implications. Until the May 21 Schmeiser decision, corporations could not patent higher life forms in Canada. In the "Harvard Mouse" case, our Supreme Court refused to give researchers a patent on a research mouse genetically engineered to be susceptible to cancer. They ruled that only simple life forms—yeasts, bacteria, etc.—could be patented and that higher life forms—plants, seeds, animals—could not be patented. By extending Monsanto's patent of a gene to a defacto patent on a seed and a plant, the Court effectively reversed its previous ruling and now effectively allows patents on plants and, potentially, animals. Boehm noted that by inserting one gene, Monsanto, with the help of the Supreme Court, has been able to appropriate all the other genes in the plant as well as all of the research and development that nature, farmers, and publicly-funded scientists have contributed over past decades and millennia.

The ruling tightens the grip of corporate seed developers and reinforces and emboldens them in their persecution of farmers who run afoul of their patents, either by re-using seed or by possessing seed through inadvertent contamination. The courts agreed that Percy Schmeiser never utilized the Roundup Ready gene in the canola on their property—he never sprayed it with Roundup. Nor did Schmeiser seek to profit by selling seed. Nevertheless, the court

*(continued on page 11...)*

## A summary of what the Justices ruled

*Prepared from notes supplied by Steve Shrybman, lawyer for the NFU and other interveners in the Schmeiser case.*

### The majority of the Justices found that:

1. Monsanto's patent is valid.
2. A farmer can infringe a patent to a gene or cell by his or her use of a plant or seed into which that patented gene or cell has been incorporated.
3. Possession of such seeds or plants raises a rebuttable presumption of use. (It is *presumed* that the farmer used, intended to use, or in the future could use the patented material. The farmer may bring forward evidence to rebut this assumption.)
4. Infringement of Monsanto's patent does not require use of a Roundup herbicide, and while a defendant's conduct may rebut the presumption of use which attaches to mere possession, in the Schmeiser case the presumption of use remains unrebutted.
5. As Monsanto opted for an accounting for profits (they had the option to opt for "profits" or "damages") they are entitled to no compensation, as Schmeiser made no profit from the sale of canola produced from seeds contaminated by Monsanto's genes and cells.
6. The parties will bear their own costs, so Schmeiser is off the hook for more than \$150,000 plus costs for the Supreme Court Appeal that would have otherwise have been payable.

### The minority opinion of the Justices found that:

1. A patent to a gene or cell should not be construed to grant exclusive rights over the plant or its offspring.
2. So construed, the product and process patents are both valid.
3. Infringement of the patents in question can only occur if the modified genes and cells are used as they existed in the laboratory prior to differentiation and propagation.

*(Schmeiser case lost, from page 10)*

found Schmeiser in violation of Monsanto's patent. The only saving grace was that, because he did not profit, the Court ruled that Monsanto was owed nothing, saving the family approximately \$200,000 in costs awarded by lower courts. The next farmer, however, will not likely be as lucky. And most farmers will be forced to suffer and pay in silence as Monsanto forces them into out-of-court settlements and gag orders. Despite the small victory for the Schmeiser family, they are still out tens-of-thousands in costs and lost income and years of their life. And they must endure these losses even though they did not make a dime as a result of Monsanto's gene nor did they cause Monsanto any harm through their actions.

Monsanto has a stranglehold on genetically-modified (GM) seeds. It sold the seed for over 90% of the global acreage planted to GM seeds last year. Its revenues on seeds were approximately \$1.2 billion [U.S. \$] in 2003.

For the NFU and its allied organizations, the struggle now shifts from the courtroom to the House of Commons. In its decision, the Supreme Court did not adequately consider the broader public interest issues. Canadians now have to decide whether genes and higher life forms should be patented. Commenting on the Schmeiser decision, NFU President Stewart Wells said that "The Supreme Court has given their opinion on a point of law. It is clear to us that the law is inadequate and does not protect individual farmers. It is now time to change the law." NFU officials are participating in a series of strategy session meetings with experts and representatives of other organizations to determine how we can protect farmers' inalienable right to save seed and how we can reverse the corporate takeover of our food system.

— nfu —

## NFU briefs still available

"The Farm Crisis, Bigger Farms, and the Myths of Competition and Efficiency" is the title of the NFU's November 2003 report on the real causes of the farm crisis and the lies that our political and corporate leaders tell us about that crisis.

The report has been very popular and the NFU has distributed several thousand copies. The brief has had international impact, generating dozens of letters to the editor in Australian farm papers as well as interest in the U.S., U.K., and elsewhere.

The NFU National Office still has several hundred copies of this report available and we don't want them languishing on our shelves.

If you can use additional copies to distribute to farmers or urban residents, please contact the NFU office and request as many as you need. Donations to cover postage are welcome but not necessary.

## Whistleblower aids farmers. Now he needs our help.

**D**ave Lewicki, formerly a grain inspector with the Canadian Grain Commission (CGC) ought to have received a reward for outstanding service as a public servant. Instead—as revealed in court documents—senior CGC managers denigrated his work and character, docked his pay, and passed him over for advancement. All this was done, it seems, because he explained in clear language how the many changes proposed by CGC senior managers would weaken the Grain Commission, cost farmers money, and put more profit and power in the hands of grain companies. For his work on behalf of farmers, Dave Lewicki has paid a high price—in his career, his personal life, and financially.

**Dave Lewicki has taken legal action to gain compensation for his treatment. He now needs help with his legal disbursements. Many of you have already sent a financial contribution toward Dave's legal fees. Dave has asked that the NFU pass on his heartfelt thanks. The NFU asks that others consider supporting him with donations.** Donations of any size would help. Dave has committed to repaying donations of \$50 or more from the proceeds of his anticipated legal settlement. Smaller amounts will be "repaid" by a donation to charity.

NFU Member Eduard Hiebert has volunteered to collect money for Dave and to keep track of donations. Please mail cheques to: **Eduard Hiebert, 2186 HWY 26, St. Francis Xavier, Manitoba R4L 1B3.**

*Please make all cheques payable to Dave Lewicki*

*(Seed Sector Review, from page 3)*

such as varietal purity standards. These, in turn, according to the Review Report, would probably require field inspections, documentation, declarations, etc. The Review admits that, as a result of these additional regulations, “the producer of common seeds will be faced with additional costs....” The Review Report goes on to say that the end result of increased regulations “might be that common seed becomes too expensive, making certified seed more economical.” (RSSAC, p. 42) The use of “economical” in this context is perverse: certified seed would become more economical, not because it would become cheaper, but because the alternatives would become more expensive. The Review repeatedly states the need to “level the playing field between pedigreed and non-pedigreed seed” (p. 42) and to narrow “the price spread between Certified seed and common seed....” (p. 37) by increasing the price of the latter.

A key element of the Seed Sector Review is its willingness to advocate additional regulations. At first glance, the Review seems a blueprint for industry deregulation—to get government, the Food Inspection Agency, and others away from the seed and grain quality systems so that the dominant players can maximize their profits. And while some might argue that deregulation has merits, what the Seed Sector Review proposes is not simple deregulation, but a more pernicious initiative: increasing regulation and a re-regulation of the sector in the interests of the largest players. The Seed Sector Review advocates fewer restraints on seed companies *but additional restraints on farmers.*

### In whose interests?

The *Seeds Act* and other protections introduced in the first half of the 20<sup>th</sup> Century were designed to protect farmers from seed companies: standards and labels would protect farmers from disreputable seed sellers hawking inferior or inappropriate seeds. (In 1923, seed sellers were promoting “Alaska”, a wheat variety they claimed would yield 100 bushels per acre.)

More recent initiatives such as PBR, patenting, and the recommendations in the Seed Sector Review Report are designed to protect seed companies from farmers.

4. **Replace KVD**—Another example of the willingness of the dominant players to create additional regulations when it suits them is the Review’s desire to replace our current wheat quality system—based on kernel visual distinguishability (KVD)—with a more complex and costly system based on instrument testing, identity preservation, and, in some instances, Variety Eligibility Declarations (VEDs).

KVD is an integral part of Canada’s simple, effective, and inexpensive quality management system—a system that, according to Canadian customers, delivers the highest quality and most consistent grain in the world. Moving away from KVD would increase farmers’ costs for administration, testing, segregation, identity preservation, dispute settlement, and transport costs. No one has shown that the benefits of moving away from KVD outweigh the costs.

5. **Remove “merit” as a registration requirement**—Until recently, new varieties of wheat and many other grains had to pass a merit test. On a balance

*(continued on page 13...)*

### Farmers’ right to save seed

Around the world, as corporations such as Monsanto use patents and trade agreements to take control of seeds, farmers are fighting back and asserting their rights over the seeds they helped develop over thousands of years. The most important of those rights is the farmers’ right to save and re-use their seeds, unencumbered by restrictions and without an obligation to pay royalties.

The Canadian Seed Trade Association (CSTA) was one of four main groups in the Seed Sector Review. In the Western Producer, CSTA Vice-President Bill Leask said: “Within the current Patent Act, we’re saying there is no so-called farmer privilege to save seed. We don’t think there should be.”

In 2002, Canada signed the International Treaty on Plant Genetic Resources for Food and Agriculture. That Treaty affirms farmers’ right to save and re-use seeds.

*(Seed Sector Review, from page 12)*

of factors—yield, disease resistance, agronomic performance—new varieties had to be an improvement over existing ones. Recently, for some grains, the merit standard was watered down: new varieties did not need to be superior to existing varieties, only equal. The Review suggests that the merit criteria might be dropped altogether. (RSSAC, p. 19)

6. **Pave the way for new GM crops**—As revealed in the debate around Roundup Ready wheat, genetically-modified (GM) crops can trigger market losses and other costs totalling hundreds of millions of dollars per year. Monsanto and similar companies counter that the solution is to segregate GM crops from non-GM. Such segregation is costly, and, in the case of wheat, impossible in our current bulk-handling system which is based on KVD, standardized grades, and wheat blending. To ease the introduction of new GM crops, biotech companies need to restructure our quality system and to introduce identity preservation and affidavit systems. And to ensure that revenues on these crops are maximized, companies need tighter restrictions on farmers and additional mechanisms to collect royalties.
7. **More powerful seed companies and more expensive seed**—Mergers and acquisitions between seed, gene, and pesticide companies over the past two decades have meant increasing concentration and declining competition in the seed sector. Today, four companies dominate the GM seed industry: Syngenta, Bayer, Monsanto, and DuPont. Second, these companies have been working behind the scenes to expand patent and Plant Breeders' Rights (PBR) protections. Third, the dismantling of public sector plant breeding has reduced the competition that these companies face from non-corporate breeding efforts. This combination of increased concentration, increased patent protection, and decreased public sector participation has dramatically increased the power and control of the dominant seed corporations. The proposals and directions contained in the Review's Report—compelling farmers to buy seed, outlawing common seed, expanding tools for royalty collection, reducing government participation—would further empower the dominant seed corporations. The effects on seed prices would be predictable.

## Who pays?

*The Seed Sector Review's report on the "3rd Meeting of the Industry Advisory Committee" (p. 6.) deals with the issue of who pays for regulatory changes. The following is an excerpt. [Emphasis added.]*

"For identify preservation of the end product (not process), **the consumer pays**. If a system is imposed ahead of the rest of the world, **the producer pays**. **Government and taxpayers should pay** for achievement of set minimum standards as they relate to the "public good."

**Government** should have some responsibility to pay for systems related to real food and environmental safety issues.... **Government** should also be responsible to pay for costs to industry related to imposed regulations.

Some members noted that **the consumer should pay** for any 'lifestyle' regulatory costs such as organic certification, while **producers should be responsible** for food safety related costs at the farm level. It was also noted that if low food prices are to be maintained, then the **taxpayer will have to subsidize** the costs associated with food production regulations. Similarly, **taxpayers should support** 'Brand Canada' efforts. "

*It seems that everyone except seed companies, processors, and grain companies should pay.*

8. **A fundamental tightening of the rules governing seed**—Canada's PBR regime is based on the UPOV (International Union for the Protection of New Varieties of Plants) Convention as adopted in 1961 and revised in 1978. The Seed Sector Review recommends replacing our "UPOV '78" framework with the much more restrictive (for farmers) UPOV '91.

Changing from UPOV '78 to UPOV '91 would:

- Extend plant breeders' protection and royalty periods from 15 years to 20 years.
- Extinguish farmers' automatic right, protected in UPOV '78, to save, re-use, and sell seed (called "Farmers' Exemption" within the UPOV Convention).
- Create "a cascade right to extend PBR to harvested material and end products in crops where breeders did not have the opportunity to exercise his [sic] rights on propagating material." (RSSAC, p. 32) This is the change that seed corporations need in order to collect royalties at elevators and seed cleaning facilities.
- Open the door for the patenting of seeds protected under Plant Breeders' Rights—introducing double protection for seed developers.

*(continued on page 14...)*

*(Seed Sector Review, from page 13)*

The Review's Report (presumably endorsed by Grain Growers of Canada commodity groups) concluded: "There were no downside concerns expressed with moving to UPOV '91. ... [T]his change should be made as soon as possible." (RSSAC, p. 34)

9. **Farmers lose control**—To a significant extent, he who controls the seed, controls agriculture. As the control of seed increasingly passes out of the hands of farmers into the hands of seed transnationals, farmers lose options, control, and decision-making ability. The proposals of the Seed Sector Review (and the PBR and life patenting regimes which they are a part of) are especially pernicious. If implemented, farmers would lose their last remnants of control on seeds—they would lose their right to save and re-use that seed. They would essentially lose ownership of their seeds and become renters of corporate seeds.

### Conclusion

Until the 1990s, seed development was public. Researchers on the public payroll at public universities and Agriculture Canada facilities developed new varieties to meet the needs of Canadian farmers, and these institutions turned those varieties over to farmers at low cost. In the early 1980s, the public sector accounted for over 95% of formal plant breeding in Canada and 100% of the breeding for cereal crops and oilseeds. (reference on request)

In recent decades, however, transnationals have moved in to capture the revenues and profits from the seed "industry." To maximize control and ensure profits, these corporations needed a vast regulatory regime. First came PBR, then gene patenting and the global trade agreements needed to protect these patents. The Seed Sector Review is the latest step. And like previous steps, Review proposals, if implanted, will increase restrictions on farmers, increase the power of the dominant seed corporations, and transfer billions of dollars from farmers to these corporations. The proposals and directions in the Seed Sector Review, if implemented, will damage family farms.

— nfu —

### Myth:

private sector breeding will deliver

Implicit in the government's withdrawal from plant breeding and its willingness to heap regulations and costs onto farmers is the idea that private sector seed companies will create the seeds that Canadian farmers need.

Big seed companies might develop new corn varieties that North American farmers can plant on millions of acres, but these companies won't develop the short-season wheat varieties farmers need in the Peace River region. There simply is not enough acreage or money to attract the transnationals.

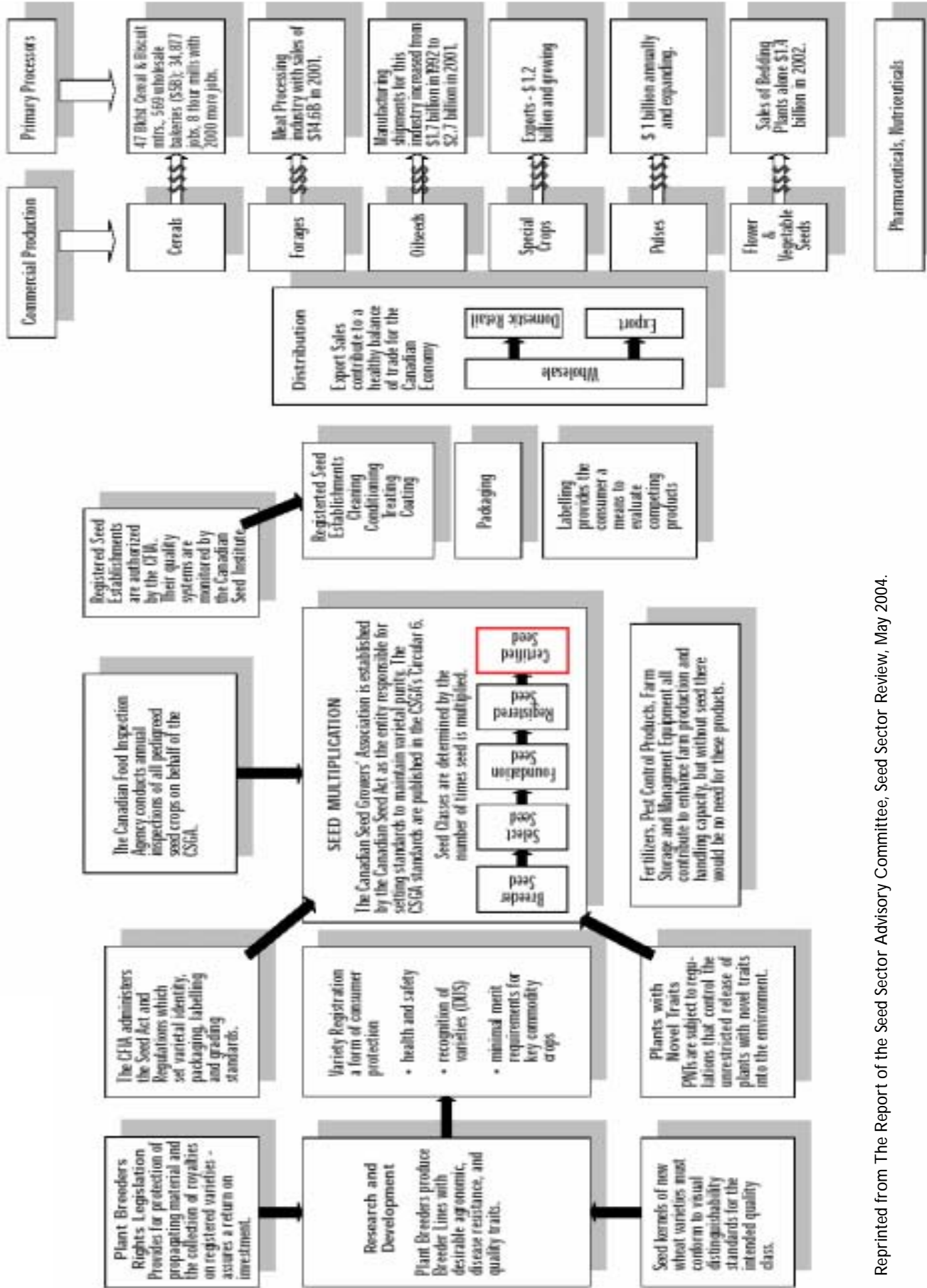
Nor will these companies do the long-term, basic research needed to develop or adapt new crops, as with canola and lentils.

Government initiatives such as PBR legislation, seed patenting, and, potentially, charging fees on farm-saved seed are all part of an ill-conceived attempt to create enough profitability in the system (transfer enough money from farmers to seed companies) to make a private breeding industry work. As the Review Report says: "Profitability is a perpetual concern. Industry and government systems of enforcement and compliance for breeders' rights and seed marketing are key to profitability." (RSSAC, p. 9)

The privatization of plant breeding will fail: Farmers will pay more for seeds that serve them less well; Canada will lose its ability to shape the direction of its agriculture and food systems; and research costs will increase as patenting, contracting, and commercial-secrecy make research difficult and expensive.

Plant breeding and seed research contribute to the public good; they rely on the free exchange of information among farmers and researchers, and they have long-term benefits that cannot be recovered through short-term fees. Breeding and research must be publicly-funded, done in public institutions, and the results must be shared as widely as possible at the least possible cost and with the fewest possible restrictions. The Seed Sector Review is part of an attempt to construct a financial base for a high-cost, inefficient, and unproductive model of private plant breeding and research.

For more information on private versus public plant breeding, see: Terry Boehm, "The Politics of Biotechnology: The Politics of Food," *Union Farmer Quarterly*, Spring 2003, p.12, and Devlin Kuyek, *Stolen Seeds: the Privatization of Canada's Agricultural Biodiversity*, 2004.



Reprinted from The Report of the Seed Sector Advisory Committee, Seed Sector Review, May 2004.

*(Redefining 'property', from page 5)*

allowed ourselves to be confined in a straitjacket of limited imagination and narrow concepts, and have failed to get to the root of the issue. Our language and analysis has not been sufficiently historically informed and incisive, and relies too much on slogans and emotional appeal. We have been thinking only in terms of private property or a vague and perhaps romantic notion of commons, paying even less attention to 'public domain.' We should, however, recognise three quite distinct categories of property and space – private, common and public.

*Private* is easily understood as belonging to a person or a family, but we have to recognise that corporate-owned property and space is considered just as much private as your home. The shopping mall is perhaps the most obvious example of the both the property *and* the space within it being privately – that is, corporately – owned. With its pretense of being public space – and deliberately setting out to create the sense of a village square, but with political activity and anything that might interfere with commerce excluded, the healthy concept of public domain is further eroded. In fact, children growing up in the malls are deprived of any sense of the politics of public life. Such is our confusion over public and private property *and* space that a common fishery, or the fields of a village, are not even given the same recognition or status as the shopping mall.

*Commons* is wrongly used to describe what is considered as public. This misrepresentation can be attributed to Garret Hardin and his 1968 essay, *The Tragedy of the Commons*, in which he set out to demonise the concept of commons in order to finish off any notion of public interest or public good, and with it any positive connotations for public property and space. As James Boyle sarcastically puts it, “*Everyone’ knows that a commons is by definition tragic, and that the logic of enclosure is as true today as it was in the fifteenth century. Private property saves lives.*”<sup>2</sup> In reality, commons historically referred to property and space that was ‘owned’ communally – by a group of fisherfolk or a village, for example – and managed for the long-term good of the group, including succeeding generations. Access to the property and space – fields, fishing grounds, forests – was limited to the group ‘owning’ and managing it. It was not open to exploitation by outsiders, though limited use of the space could be extended to them. Thus a well-defined fishing area might be closed for fishing to all but the ‘owners’ while still permitting everyone to swim or paddle in it.

The *public domain*, on the other hand, is open to all, but that does not mean a ‘free for all.’ Access may be denied to those who refuse to play by the rules governing use of the public space and ‘property.’ Roads and parks are good examples. Access is open to all, but the rules of the road must be obeyed, and are usually enforced by agents of the ‘state’ – police of one sort or another. Village greens and market squares have also been socially and politically vital spaces for communities.

### Breaking out of the straight jacket

Outside the culture of societies dominated by the ideology of the market economy (see box 2), the ideology of privatisation and private property is highly contested. There is also growing resistance to the dictatorship of intellectual property rights in market-defined societies, as indicated by the following letter. It was sent by 59 high profile scientists including John Sulston of the Human Genome Project, to the Director General of the World Intellectual Property Organisation (WIPO), stating:<sup>3</sup>

*“In recent years there has been an explosion of open and collaborative projects to create public goods. These projects are extremely important, and they raise profound questions regarding appropriate intellectual property policies. They also provide evidence that one can achieve a high level of innovation in some areas of the modern economy without intellectual property protection, and indeed excessive, unbalanced, or poorly designed intellectual property protections may be counter-productive. We ask that the World Intellectual Property Organisation convene a meeting in calendar year 2004 to examine these new open collaborative development models, and to discuss their relevance for public policy.”*

WIPO initially welcomed the letter and talked about holding a conference on the subject, but was subsequently caved in when it was inundated with calls from trade groups and government representatives who said WIPO should not be wasting time on this, and instead be putting its energy into protecting their intellectual property rights.

In 2001 James Boyle (one of the letter’s signees) and his colleagues at Duke University School of Law held a conference on ‘the public domain,’ which he describes as “*the ‘outside’ of the intellectual property system – the material that is free for all to use and to*

*(continued on page 17...)*



*build upon.*” This seemed to be the first conference of its kind, which according to Boyle, “*is surprising when one realises the central role of the public domain in our traditions of speech, innovation and culture.*” Boyle compares the current lack of discourse on the public domain with that on the ‘environment’: “*Once upon a time there was no environmental movement. Before there could be an environmental movement, the concept of ‘environment’ had to be created, that is, a discourse about the environment had to be created before a social movement to protect it could emerge.*” We have to create a discourse about the concept of ‘public domain’ before a movement to promote it can rise up.<sup>4</sup>

### Roots of the second enclosure

To identify the political-ideological context of the diminution of the public domain, Boyle points to the post-Cold War ‘Washington Consensus’, which claims that history teaches the only to growth and efficiency is through markets, and that property rights are an essential condition for markets. The phrase ‘Washington Consensus’ was coined originally “*to refer to the lowest common denominator of policy advice being addressed by the Washington-based institutions [World Trade Organisation, International Monetary Fund, etc] to Latin American countries as of 1989.*”<sup>5</sup> These policies included:

- Fiscal discipline
- Trade liberalisation
- Liberalisation of inflows of foreign direct investment
- Privatisation
- Deregulation (to abolish barriers to entry and exit)
- Secure property rights

Boyle mockingly dubs the Washington Consensus “*property saves lives,*” explaining that: “*The world of the Washington Consensus is divided into two parts. In one, growing smaller by the minute, are those portions of the economy where the government plays a major regulatory role. The job of neo-liberal economic thought is to push us toward the privatisation of the few areas that remain. The second area of the Washington Consensus is an altogether happier place. This is the realm of well-functioning free markets, where the state does not regulate, subsidise, or franchise, but instead defines and protects property rights. While unintended consequences are rife in the world of government regulation, no such dangers should be feared if the government is simply handing over a patent on gene sequences or stem cell lines, or creating a property right over compilations of facts. Property is good, and more property is better.*”

The corporate grab for ‘genetic resources’ – plant, animal and human – is being called “*the second enclosure*” (see box 3) by activists around the world, who have been battling for farmers rights, retention of their seeds in their village commons and the recognition of traditional/indigenous knowledge. But this terminology is definitely not the language of the public relations firms responsible for corporate image-making.

### It wasn’t always so black and white

While intellectual property rights as currently practiced and pursued are acts of enclosure for private gain, historically copyright and the public domain were born together as the outcome of a struggle between the vested interests of authors and publishers enjoying a perpetual property right and the interests of the broader public in a more open literary environment.

*“The pre-history of copyright was not total freedom, but rather a set of guild publishing privileges that produced a framework of pervasive regulation. Instituting a copyright system with statutory time limits, particularly after the House of Lords rejected the author’s claim of a perpetual common right, enabled a much freer and more open literary environment. It is only after the Statute of Anne [1709] . . . that certain classic works became available for any publisher to print in a competitive market.”*<sup>6</sup>

In addition to the British focus on enclosures and commons, there is, as part of the same cultural history, Roman law, which recognised five different categories of what might be described as ‘impersonal’ property.<sup>7</sup> These categories are not tidy, as indicated by the word *res*, the Latin word for ‘thing,’ a fuzzy word if there ever was one. But they do offer more ‘property’ options than seem to be recognised today.

*Res nullius*: things that are unowned or have simply not yet been appropriated by anyone.

‘Unsettled’ land, traditional knowledge, herbal and medicinal plants and agricultural seeds and human DNA have all been treated as *res nullius*, ‘the common heritage of humanity’ open to appropriation by others – queens, governments and corporations. The establishment of botanical gardens like Kew and Singapore with material gathered from colonies around the world was an integral aspect of British colonialism, just as the St. Louis Botanical Garden is an integral aspect of Monsanto’s imperialism.<sup>8</sup> In recent years there have been innumerable examples of the collection and appropriation of human DNA as if it were *res*

*(continued on page 18...)*

*(Redefining 'property', from page 17)*

*nullius*, from the cell line of a Hagahai indigenous person from Papua New Guinea to John Moore's spleen to the entire population of Iceland.

**Res communes:** things open to all by their nature, such as oceans and the fish in them or the air.

This is the understanding of the commons promoted and vilified by Garrett Hardin. It is closer to the truth to say that historically the commons has been a limited-access space managed by a distinct community according to its social norms, which excluded individual benefit at the expense of the community, whether referring to grazing rights or catching fish. Boyle comments that one might say that the function of intellectual property is to turn *res communes*, things by their nature incapable of ownership, into *res nullius*, things not yet owned but capable of appropriation.

**Res publicae:** things that are publicly owned and made open to the public by law.

This includes parks, roads, harbours, bridges and rivers. *Res publicae* are public spaces rather than wilderness. There is open access, but one is expected to behave according to social norms and laws.

**Res universitatis:** things owned by a public group in its corporate capacity.

The standard 'owner' for the Roman *res universitatis* was a municipality, but both private (churches, universities, hospitals) and public (villages, fishing communities) groups could own property in common, including lands or other income-producing property. Such limited common property regimes may be common on the inside, but they are property on the outside, that is, vis-à-vis non-members.

**Res divini juris;** things 'unownable' (of divine jurisdiction) because of their divine or sacred status.

For many people, this would include seeds, plants, traditional knowledge, and even land. Obviously all this depends on your attitude and the cultural context.

*(continued on page 23...)*

#### Words designed to trap us

The following terms and images in current use can all be related to property rights in some form. If allowed to, each of these words could raise questions of access and exclusion. In the current context of individualism, materialism and market ideology, however, they customarily only raise questions about rights and innovation, progress and profit – and the appropriate penalties for violation.

|                  |                       |
|------------------|-----------------------|
| Private property | Intellectual property |
| Resources        | Seeds                 |
| Parks            | Genes                 |
| Commons          | Traditional Knowledge |
| Public domain    | Common Heritage       |

## New initiative to safeguard the public domain

Brewster Kneen is helping to establish **The Forum on Privatization and the Public Domain (P&PD)**. The Forum will be a public voice on the full range of issues raised by the relentless expansion of what are considered to be patentable products, processes, discoveries, inventions, and appropriated goods—what is commonly referred to as *intellectual property*. This advancing domain stretches from seeds to software, from drugs to human genetic material, from Traditional Knowledge to poetry and music.

The Forum will require full-time staff and appropriate funding as an independent non-profit organization. The Forum will be the focal point and clearinghouse for documentation on social, economic and legal aspects of intellectual property and related issues via electronic and print media. It will develop a base of speakers and resource persons. It will engage in public education and analysis on current issues and alternatives to existing intellectual property and privatization practices.

The Forum will produce a monthly newsletter. As appropriate, the Forum will raise this public voice to address matters of current importance. A listserv, the Forum on the Patenting of Life/Forum sur le brevetage du vivant, is already in place. (To be added to the list, send a brief self-descriptive message to Devlin Kuyek: [devlink@sympatico.ca](mailto:devlink@sympatico.ca))

**To get this off the ground with staff and communications capability, \$100,000-200,000 is needed. Brewster and others are in the process of developing a notable 'steering committee' to oversee the project in its initial stage and to give it visibility. If this project is something that you would like to be part of in some way, or would like to support financially, or if you know of someone who might be able and willing to make a substantial tax-deductible contribution, please do let Brewster know.**

#### **Contact Brewster:**

[brewster@ramshorn.ca](mailto:brewster@ramshorn.ca)

phone: 250-675-4866,

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# Oversupply update

**G**overnments often explain the grains component of our farm income crisis like this:

*EU subsidies cause overproduction and falling prices.*

or

*Unsubsidized, low-cost producers such as Brazil are bringing massive acreage under cultivation, flooding the market, and driving down prices.*

or

*Non-traditional suppliers like the Ukraine are entering the grain market and dumping large stocks of low priced grain.*

or

*Traditional importers like China are becoming self-sufficient or beginning to export, depriving us of traditional markets and increasing export competition.*

World grain production and consumption data show that these explanations are lies.

The table on the next page shows world consumption (“use”), ending stocks (“stocks”), and stocks/use ratios for total grains for the past 44 years. The following summarizes some observations from that data:

- 1) World total grains stocks/use ratios (the amount we have left in the cupboard relative to the amount we eat in a year) are at 16.25%—their lowest levels since the 1973 crop was harvested.
- 2) At 16.25%, the current world grains stocks/use ratio is within a percentage point of the 15.36% level that sparked the 1973 boom. Stocks/use ratios peaked at about 35% in 1986. Today’s levels are less than half the 1986 level and may—this year or next—fall below 1973 levels.
- 3) In 1973, there was a thriving and (probably) sustainable cod fishery off Newfoundland. The world’s other fisheries were in good shape. Today, the cod are gone and many of the world’s other fisheries have collapsed or are being fished at unsustainable levels. As total grains supplies dwindle, fish stocks and other food supplies are similarly declining.

- 4) To rid the world of the grain “glut of the late ‘60s and early ‘70s, governments had to encourage farmers to take land out of production (remember Operation LIFT?). Today, we have returned to 1973 supply levels even as we are working hard to *maximize* production (no more summerfallow, GM crops, new varieties, increased fertilizer use, etc.). 1973 levels were partly a result of public policies to reduce production. Today, we’ve come back down to similar levels despite energetic attempts to increase production.
- 5) Unlike 1973, today we are facing the uncertainty of climate change.
- 6) In the lobby of Canada’s IDRC (International Development Research Centre) building in Ottawa, there is a “Resource Clock.” As you stand there, you can watch the world population count clicking upward and the world’s arable land area clicking downward. There is an online version of this Resource Clock. Go to [www.irvl.net/resourceclock.htm](http://www.irvl.net/resourceclock.htm) and click your web browser’s “refresh” button continually to watch the numbers change. As the world’s population climbs toward 8 billion in 2029 and 9 billion in 2049 (U.S. Census Bureau), our per-capita land base will continue to decline, and sharply. Despite new acres in Brazil and elsewhere, our per-capita acreage is going down.
- 7) In order to keep up with a burgeoning population and a declining per-capita land base, we have turned to highly-productive industrial food production methods, highly dependent on chemical fertilizer. That fertilizer is made directly from fossil fuels and, thus, contributes significantly to climate change. It is likely that increasing energy prices and the need to curb climate change will force us to re-examine fertilizer use.

*(continued on page 20...)*

*(Oversupply update, from page 19)*

- 8) For five consecutive years, beginning with the 1999/2000 crop, stocks/use ratios for world total grains have fallen. That means that for five consecutive years, we have eaten (or fed to livestock) more grain than we have produced. Over the past five years, production has not kept up with consumption. Where is the overproduction?

The preceding is not a prediction of a coming grain price boom or the end of the farm crisis. Anyone that has worked on farm policy knows that prices are not set simply by supply and demand: there are at least three factors involved in setting price: supply, demand, and what you can get away with.

The preceding is, however, proof that government economists, market page pundits, and political leaders are lying about the causes of the farm crisis when they use the words such as “oversupply”, “surplus”, “glut”, “overproduction”, and “surplus.”

The fish are disappearing, our climate is becoming less stable and reliable, our per-capita land base continues to decline, we are utilizing increasingly desperate and unsustainable methods of propping up food production, and we are not keeping up with consumption....and family farmers must be impoverished and expelled because we are producing too much food. Such is the logic of the mainstream explanations of the global farm crisis. Politicians who mouth this fraudulent logic should be ashamed. — nfu —

## World Total Grains Stocks/Use

| <b>CROP YEAR<br/>(Canadian<br/>crop planted<br/>in spring of<br/>first year)</b> | <b>USE: "Total<br/>Domestic<br/>Consumption"<br/>(1000 MT)</b> | <b>STOCKS:<br/>Ending<br/>Stocks<br/>(1000 MT)</b> | <b>STOCKS/U<br/>SE RATIO</b> |
|--|--|--|------------------------------|
| 1960/1961  | 815,354  | 203,110  | <b>24.91%</b>                |
| 1961/1962  | 816,802  | 181,979  | <b>22.28%</b>                |
| 1962/1963  | 837,790  | 189,795  | <b>22.65%</b>                |
| 1963/1964  | 852,140  | 192,646  | <b>22.61%</b>                |
| 1964/1965  | 895,825  | 193,773  | <b>21.63%</b>                |
| 1965/1966  | 932,062  | 159,141  | <b>17.07%</b>                |
| 1966/1967  | 956,596  | 189,474  | <b>19.81%</b>                |
| 1967/1968  | 987,607  | 213,316  | <b>21.60%</b>                |
| 1968/1969  | 1,020,053  | 243,671  | <b>23.89%</b>                |
| 1969/1970  | 1,068,782  | 227,781  | <b>21.31%</b>                |
| 1970/1971  | 1,108,019  | 192,883  | <b>17.41%</b>                |
| 1971/1972  | 1,150,044  | 217,525  | <b>18.91%</b>                |
| 1972/1973  | 1,173,675  | 180,277  | <b>15.36%</b>                |
| 1973/1974  | 1,229,864  | 191,780  | <b>15.59%</b>                |
| 1974/1975  | 1,190,510  | 198,933  | <b>16.71%</b>                |
| 1975/1976  | 1,212,115  | 218,928  | <b>18.06%</b>                |
| 1976/1977  | 1,273,213  | 279,947  | <b>21.99%</b>                |
| 1977/1978  | 1,319,937  | 277,978  | <b>21.06%</b>                |
| 1978/1979  | 1,380,409  | 333,022  | <b>24.12%</b>                |
| 1979/1980  | 1,416,413  | 327,736  | <b>23.14%</b>                |
| 1980/1981  | 1,440,159  | 307,855  | <b>21.38%</b>                |
| 1981/1982  | 1,463,798  | 334,128  | <b>22.83%</b>                |
| 1982/1983  | 1,480,653  | 391,232  | <b>26.42%</b>                |
| 1983/1984  | 1,538,458  | 349,986  | <b>22.75%</b>                |
| 1984/1985  | 1,587,778  | 428,730  | <b>27.00%</b>                |
| 1985/1986  | 1,588,635  | 518,995  | <b>32.67%</b>                |
| 1986/1987  | 1,640,825  | 573,461  | <b>34.95%</b>                |
| 1987/1988  | 1,680,031  | 527,135  | <b>31.38%</b>                |
| 1988/1989  | 1,657,995  | 450,666  | <b>27.18%</b>                |
| 1989/1990  | 1,708,747  | 440,417  | <b>25.77%</b>                |
| 1990/1991  | 1,742,320  | 496,639  | <b>28.50%</b>                |
| 1991/1992  | 1,718,285  | 488,498  | <b>28.43%</b>                |
| 1992/1993  | 1,743,526  | 524,449  | <b>30.08%</b>                |
| 1993/1994  | 1,745,571  | 485,589  | <b>27.82%</b>                |
| 1994/1995  | 1,767,349  | 474,320  | <b>26.84%</b>                |
| 1995/1996  | 1,747,967  | 428,333  | <b>24.50%</b>                |
| 1996/1997  | 1,812,729  | 471,451  | <b>26.01%</b>                |
| 1997/1998  | 1,824,699  | 522,303  | <b>28.62%</b>                |
| 1998/1999  | 1,834,855  | 560,581  | <b>30.55%</b>                |
| 1999/2000  | 1,853,647  | 565,960  | <b>30.53%</b>                |
| 2000/2001  | 1,854,781  | 543,970  | <b>29.33%</b>                |
| 2001/2002  | 1,896,561  | 514,147  | <b>27.11%</b>                |
| 2002/2003  | 1,906,637  | 420,486  | <b>22.05%</b>                |
| 2003/2004  | 1,936,880  | 314,786  | <b>16.25%</b>                |

# Restoring democracy to a company world

## The “Simultaneous Policy” would empower voters to globalize our common human values, including sustainable agriculture

—By Syd Baumel

**W**e live in politically paradoxical times. When in 1991 the Soviet Union “tore down that wall,” pundits proclaimed “the end of history” and the dawn of a free and democratic new world order. And indeed, today roughly 60 percent of the world’s citizens can vote in general elections, and a majority of the world’s nearly 200 countries are democracies. With virtually all the world’s developed nations governed democratically, in theory most of the planet’s wealth and power is now firmly in the hands of “we the people.”

So why doesn’t it feel that way?

Freedom and democracy may be overrunning the planet, yet ordinary citizens grow more politically alienated and disenfranchised by the day.

The problem, analysts generally agree, is that democratization and the spread of greater individual freedom has been a fig leaf for economic globalization – an elitist, undemocratic process that has given priority to the freedom of multinational corporations and investors to maximize profits in the global marketplace. The will of the people has taken a back seat. Dollar democracy has supplanted true democracy.

Farmers – whether family farmers in North America or “peasant” farmers in Africa – have been particularly hard hit by the global rise of corporate clout over democratic governments and multinational economic institutions. Corporate industrial agriculture has flourished while family-scale farming has floundered. A case in point is the spread of mega hog barns. Embraced by most democratic governments, whether politically right or left, these industrial food production facilities are, yet, detested by most farmers and informed citizens. In Manitoba, after the Council of the RM of Strathclair approved a 2,500-sow farrowing operation south of Riding

Mountain National Park, local beekeeper Roger Desilets told *Western Producer*: “It really erodes your confidence in the democratic process. . . . Almost everyone that lives near the proposed barns was against the idea but council approved it anyway.”

In fact, the government supported movement away from traditional, family-based farming to corporate agribusiness has occurred without the consent of the electorate and despite increasing opposition by informed consumers. If citizens could vote for the kind of agriculture they want, polls and other indicators suggest they would *not* vote for a system that:

- Puts family farmers out of business (or forces them to become venture capitalists).
- Irresponsibly degrades or destroys land, air and water.
- Threatens public health in multiple ways, including rural air and water pollution, pesticide contamination of the food supply, antibiotic resistance and the creation of new or more virulent infectious diseases such as BSE and variant Creutzfeld-Jacob disease, E. Coli 0157:147 (“hamburger disease”) and avian flu.
- Destroys the traditionally respectful relationship of farmers to farm animals, turning the latter into mere production units subject to ever increasing confinement, deprivation and cruel treatment to protect shrinking profit margins.
- Replaces the farming way of life with low-end jobs that, among other things, expose workers to health risks from polluted air in intensive livestock operations and to an exceptional rate of injury in high line-speed meatpacking plants.

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*(Restoring democracy, from page 21)*

Increasingly, consumers are voting against this “value-subtracted” agricultural model with their pocketbooks. But in a global economy marked by corporate-biased trade regulations, consumers have little recourse to vote this way at the ballot box itself. Mainstream political parties, whether left or right, shrink from making strict corporate accountability an election issue.

Why is this so?

Imagine for a moment that Canadians did make agricultural reform an election issue and elected a government to match. Imagine a Canada that is an island of small-is-beautiful, sustainable farming in a world dominated by agribusiness. Canadian consumers would probably be happier for it, despite the possibly higher prices. I say “possibly,” because if externalized costs to the environment, communities and public health were paid at the cash register instead of the tax return, the net cost to consumers would probably be less. But how would this enlightened agricultural order affect our foreign trade? Current WTO practices are biased against distinguishing between the qualitatively different processes that can go into the making of like products. In the global marketplace, it’s therefore hard if not impossible to charge for the value added of ethically and sustainably produced goods or to subsidize producers. Similarly, it’s perilous for a nation to try and restrict the import or dumping of cheap versions of the “same” goods produced at great cost to communities, animals and the environment.

Agriculturally, Canada would therefore risk becoming a “rogue state,” shunned by the global market. And the same would apply to any other sector of our economy where we might wish to advance human values, not just corporate values.

We are not alone in this predicament. All countries are being bled of their moral autonomy by amoral, free market pressures. For lack of democratic governance, economic globalization has tended to pit the free market – that is, transnational corporate profit and its trickle down benefits to the working class – against everything

that might stand in its way: social and environmental sustainability, small business survival, labour rights, human rights, food security, public health – the democratic process itself.

We have become a company world.

Enter the Simultaneous Policy (SP), a global strategy that would empower we the people to take back that world, peacefully and democratically. SP’s mission is to address the problems (such as corporate dominance of the economy) that no nation can surmount alone (and live to tell the tale). These include war, tyranny, terrorism and weapons proliferation; global warming and climate change; world hunger and disease; and environmental destruction.

SP was conceived of in 1998 by British businessman John Bunzl, now Founder and Director of the International Simultaneous Policy Organisation. Central to SP is the act of “adopting” the Simultaneous Policy. As of this writing, roughly 1200 persons in twenty countries on five continents have made this minor, but pivotal leap of faith. By doing so, they have agreed to vote in future national elections for any political candidate (within reason) who also adopts SP or to lobby their preferred candidate to adopt SP if he or she hasn’t.

Adopting SP is like voting for democracy, only democracy among nations, not just within. (Ironically, because of the erosion of national self-determination (democracy) by the “rogue” influence of global economic forces, SP would also revive democracy in countries like our own.) When citizens, politicians and political parties adopt SP they join in a collaborative, democratic process of global policymaking. It’s not unlike international treaty-making, except SP’s policies spring from citizens and civil society, not power elites, and are to be enacted as *laws*, not agreements, simultaneously in every nation or in enough nations for them to work.

The exact content of SP is, by design, “unfixed” at this early stage. However, we expect that because SP will – and must – represent the values of the majority of the world’s people, it will

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*(Restoring democracy, from page 22)*

endow humanity with a body of powerful laws to advance global peace, justice, prosperity and sustainability. This is, after all, what everybody wants, no matter what their religion, nationality or culture. And it's why we hope more and more people will adopt SP, recognizing it as a unique political tool with which to shape a new world order founded on our most common values.

As SP evolves from an ambitious vision to a formidable voting bloc capable of swinging the outcome of national elections, more and more politicians will adopt SP, if only to stay competitive. As John Bunzl tartly observes, "with citizens all around our 'company world' having been forced to stay economically competitive for so long, isn't it about time we turned the tables on our politicians and gave them a dose of their own competition medicine?"

And so, as more and more politicians who have competed for the SP vote are elected, national governments – entire countries – will be bound to adopt SP too. And finally, when sufficient nations have adopted SP, they will begin to simultaneously legislate these policies, creating a level global playing field where the highest common denominator of public good increasingly holds sway. Among these simultaneous policies, we fully expect, will be ones that make moral and sustainable agriculture the global norm. We haven't written those policies yet, and you can help us do it. Visit our website at [simpol.org](http://simpol.org), adopt SP and join the most ambitious democratic experiment the world has ever seen.

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*(Redefining 'property', from page 18)*

All of the categories identified above are forms of 'public' property as opposed to what capitalist market societies regard as private property. There is nothing absolute about these five categories, but the characterisation does make the point that there is a far greater range of property-holding arrangements possible than either those of us who oppose privatisation or those who support it have been considering. There is a huge chasm between recognition of *res nullius* and *res divini juris* on the one hand, and the current push to enclose everything, including life itself, within the for-profit domain of intellectual property rights on the other.

Now is the time for legal and institutional creativity, not defensiveness or retrenchment. Now is the time to give new meaning to the 'commons' and 'public domain' in practice. 'Property Rights,' intellectual or otherwise, need to be pushed back and the public domain regained. Just as self-provisioning communities reduce the power of global agribusiness, so rebuilding the commons may drive out the exploiters. It is not a matter of rights, but of the integrity of persons and communities.

The first enclosure of the commons

The 'first enclosure' was the enclosure of village commons by the feudal lords in Britain. The process began around 1700, and 4,000 Private Acts of Enclosure had privatised some 7 million acres of commons before the Great Enclosure Act was passed in 1845, bringing an end to the economy of the commons upon which the welfare of the peasants depended. Deprived of their commons for growing and raising their own food, they were forced to provide the cheap labour for the Industrial Revolution.

<sup>1</sup> James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain* at: [www.law.duke.edu/journals/66LCPBoyle](http://www.law.duke.edu/journals/66LCPBoyle)

<sup>2</sup> James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain* at: [www.law.duke.edu/journals/66LCPBoyle](http://www.law.duke.edu/journals/66LCPBoyle)

<sup>3</sup> See the open letter and signatories at: [www.cptech.org/ftp/wipo/kamil-idris-7July2003.pdf](http://www.cptech.org/ftp/wipo/kamil-idris-7July2003.pdf). Also, "Drive for patent-free innovation gathers pace", *Nature* 424, p. 18, 10 July, 2003.

<sup>4</sup> James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain* at: [www.law.duke.edu/journals/66LCPBoyle](http://www.law.duke.edu/journals/66LCPBoyle)

<sup>5</sup> John Williamson, Center for International Development, Harvard University. [www.cid.harvard.edu/cidtrade/issues/washington.html](http://www.cid.harvard.edu/cidtrade/issues/washington.html)

<sup>6</sup> Mark Rose, *Nine Tenths of the Law* at [www.law.duke.edu/journals/66LCPMarkRose](http://www.law.duke.edu/journals/66LCPMarkRose)

<sup>7</sup> Carol Rose, *Romans, Roads and Romantic Creators: Traditions of Public Property in the Information Age* at [www.law.duke.edu/journals/66LPCCarolRose](http://www.law.duke.edu/journals/66LPCCarolRose)

<sup>8</sup> For more on this subject, see Alfred Crosby, *Ecological Imperialism – The Biological Expansion of Europe, 900-1900*, Cambridge, 1986.

# When is \$318 billion not \$318 billion?

—by Daryll E. Ray

From time to time, I read an article that says “developed countries spend more than US\$318 billion annually to subsidize agriculture.” Each time I read that number I wince and ask myself, “How can that be?” After all the U.S. at its peak provided between \$20 and \$22 billion in support and the European Union provides some \$50 billion in direct support of its farmers. That’s something around \$70 billion and even if one throws in Japan, that’s a far cry from \$318 billion.

Some go so far as to argue that “Rich countries spend \$1 billion a day to support their farmers.” The argument then goes on to assert that “The average European cow gets \$2 per day as subsidies, more than [the] daily income of [the] vast majority of people in Africa.”

Where does this number come from and what does it include? Surely it has to be more than direct subsidies.

The \$318 billion number comes from the work of the Organization for Economic Cooperation and Development, an organization of 30 countries including most of Europe as well as Australia, New Zealand, Japan, South Korea, Canada, Mexico and the U.S. Each year OECD calculates an estimate of the total support (TSE – Total Support Estimate) given to agricultural producers in OECD countries. In 2002, that number was \$318 billion.

Unlike the way the number is often used in speeches and articles in the popular press, TSE includes much more than the subsidies that we are used to thinking about.

In OECD language, TSE is broken down into three different categories:

- Producer Support Estimate (PSE) – the total amount transferred directly to farmers;
- General Services Support Estimate (GSSE) – the amount transferred to farmers as a group including items like agricultural research, extension and food inspection;
- Consumer Support Estimate (CSE) – the transfers to or from consumers.

Of the \$318 billion in 2002, \$235 billion was in the form of PSE and \$83 billion was in the form of GSSE and CSE. One could easily argue the question of whether food inspection is of more benefit to consumers or producers. Likewise, agricultural research that increases the long-run productivity of agriculture, thus increasing supply and driving prices down, could be seen as primarily benefiting consumers. I will leave that argument for another day.

For now let’s focus on the \$235 billion Producer Support Estimate. PSE include cash payments to farmers and market price supports including the impact of tariffs and quotas on increasing domestic prices. In 2002, the price supporting component totalled \$148 billion.

That leaves \$87 billion as the level of direct subsidies to farmers in the developed countries like the US, the EU and Japan. While this number is not insubstantial, it is a far cry from the \$1 billion a day that we so often read about.

So, despite how the \$300+ billion number may be represented, the fact is that less than a third of that total is actually government payments to farmers in developed countries.

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