A lawyer’s game, a biologist’s game, a governance game: How to conduct research on the emerging Bioeconomy in international and transnational law?

By:

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The Bioeconomy is a both a transnational and a legal issue, as well as a transnational legal issue. My research hints at the notion that the current way of *doing Bioeconomy* may be rooted in Settler Colonial extractive thinking and that to achieve genuine sustainability, we should instead take bioeconomies into consideration through a pluralization of the ontologies, normative spaces and through decolonizing methodologies (Linda Tuhiwai Smith). Current definitions of Bioeconomy differ slightly for each country or supranational organization. Bieconomy stretches from biofuels to pharmaceuticals to bacteria as factories, to agriculture, and more. Despite their obvious differences, these

fields are equally considered to (discursively) produced in *the* transnational Bioeconomy by those stakeholders in biotech-industry, research, and governance who together form **an expert epistemic community**. Thus, we are witness to two central, intersecting developments within 21st century world politics.

First, the Bioeconomy which is a policy-driven agenda towards supplanting almost all traditional, fossil-based resource-dependent industries *with* new biotechnology industries and markets. In policy, research, and the entrepreneurial sector, this policy-drive is explicitly called "**the Bioeconomy**", a vague, ambiguous, and often obscure term, behind which hides a complex discourse, almost exclusively conducted by **a transnational epistemic community of experts** but with far reaching consequences for society at large. "The *Bioeconomy*" is introduced by the practitioners inside the field themselves to serve as an umbrella term and a programmatic agenda; its primary areas of legal contestation are *(intellectual) property*, benefit sharing, and risks and damages. In short, *bioeconomy* is not a term introduced to analyze a discourse of techno-social processes, such as concepts of *biopower, biopolitics, biocapital.* Instead, *there is* an existing discourse on "the Bioeconomy" created and led by members of an epistemic community. _
Second, the role of transnational law and a global legal doctrine, ***lex extractiva***, which is emerging in place of the *lex mercatoria*, remedying a global power shift of "corporate capture of normative spaces" by extractive industries. There has been a methodological shift and transformation that transnational law presents for researchers because not only practice itself must be taken seriously as in a "practice turn" but practitioners need to be not only consulted but become involved in the research. Following global law scholar Gilles Lhuilier, we can identify as "norms" the practices and rules that govern the relations between specific group of people (for example, classically "merchants") and are designated by a specific practitioners (e.g. lawyers); these actors and their discourse regarding the choices for and practical applications of norms form a "normative space" (Lhuilier).

Both developments intersect in areas where extractive industries produce incalculable risks for populations and ecosystems, increase existing inequalities and ongoing global processes of dispossession, and obscure avenues for

citizens' **democratic participation** in scientific progress and market transparency. With "Bioeconomy" biotechnological industry, researchers, and governments have entered a new constellation, regime, and accelerated phase. This *transnational policy network* (TNP) and agenda – as a discourse encountered in policy, funding programs, white papers, etc. - reimagines how we live and how we live together with and in ecosystems at the macroscopic and the molecular level. In other words: All kinds of livelihoods in their biophysical, social, economic, and ethical relations are currently put in motion. In short, the Bioeconomy is at the same time a lawyer's game, a biologist's game, and a governance game. The rules of these games share and co-produce properties of the Bioeconomy across its different ecological niches. So, to speak, *the* Bioeconomy is the forest, the ecological niches (biofuel, bacteria as factories etc) are the trees. The questions for ***global governance*** are "How is this transition taking place and how, if at all, can it be regulated? Can ways of thinking with alternative environmental legal orders and alternative living systems be a creative and provocative contribution to transnational governance?"

I understand the Bioeconomy as it currently emerges among its proponents as defining *the general application of biotechnologies for social progress and human flourishing, while increasing simultaneously productivity, competitivity, and profitability – "sustainability" is a notion often added but rarely defined by what criteria it would be evaluated.* My critical line of inquiry regarding this version of the Bioeconomy wonders if it constitutes a monoculturalistic normative space, and if so what alternative norms and options are excluded? Should we consider exploring bioeconomies in the plural and bioeconomies otherwise? My reasons for pursuing this line of inquiry are as follows.

Analyzing the discourse of the Bioeconomy (in various documents from policy statements to funding proposals or in presentations and papers contributed to conferences) reveals a somewhat simplified picture wherein:

a) all organic life can be subject to the bioeconomic transformation;

b) no matter how complex (from a strand of DNA, a protein, a single cell, whole organisms from a bacterium to a cow, or entire ecosystems) all life is rendered potentially reducible to undifferentiated, quantifiable and measurable units of

biomass; which contribute to

c) productivity and growth measurable in %-GDP or US-$; and to do so, measurable units must be

d) translatable into something that – as a good - can be owned as (material or intellectual) property and, thus, priced and/or indexed.

An archeological thought – to draw insights from Michel Foucault – allows us to see “property” as the leading principle here, which – as Brenna Bhandar and others have shown – in its present, legalistic form lives “colonial lives”: By this, I refer to the idea that objects that are thought to fall under the concept of property are reconstituted in a way that reflects *that* they are owned and that they are to be used in a way society deems most valuable whereby means a monetizable or profitable kind of value. This value is to be “extracted” from a property, and, thus, along this “logic of extraction” the objects of Bioeconomy, as falling under a kind of universal “*proprietary*”, can be seen as analogous to “land” in the logic of Settler Colonialism: All living matter falls potentially under the idea of property to be efficiently *developed* to generate profit.

The first aim of my work is to analyse this version of Bioeconomy, its foundations, and its consequences while the second aim is to see what happens to both *bioeconomies* and to *Bioeconomy’s interrelated normative spaces* if we change the underlying idea of value from its Western/Global Northern (and Settler Colonial) constitution to alternative ones. To achieve the first goal, I follow a strategy of provincialization and for the second goal I try to strike up a dialogue with decolonial options.

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