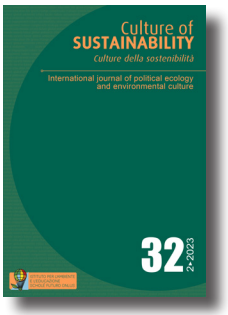

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Where is the rule of law illegal? The case of the brazilian biodiversity act: dialogues with Ugo Mattei, Laura Nader and Ulrich Beck[1]

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Abstract

This article has a clearly defined object: to analyse the socio-environmentally unfair aspects of the *Brazilian Biodiversity Act on access to genetic heritage and associated traditional knowledge*, highlighting the fact that it is an example of *the fallacies of the rule of law*. In other words, of what authors Ugo Mattei and Laura Nader (2013) call "the dark side of the Rule of Law*"*. To reach this goal, a dialogue is made with the thesis entitled *Plunder* (2013) developed by these two authors, relating it with the critical perception, from the authors of the present article, about the use of the Brazilian biodiversity Act for the purpose of plunder of genetic heritage and traditional knowledge. Finally, with the dialogue made with Ulrich Beck (1986) and his *Theory of Risk Society*, it was possible to conclude that the process of expansion of positive law, added to his concept of *organized irresponsibility between science, politics and law*, can be read in conjunction with what we identified as being the *organized irresponsibility of the permission of the economic exploitation of the genetic heritage and of the traditional knowledge.* Also having as actors science, politics, and law. As researchers, it is our duty to contribute to another kind of science, hoping it can positively influence other outcomes in the last two arenas. The methodology followed was systemic, and the technique of research was based in literature review and interpretation of legal norms and regulatory decrees.

Keywords: Brazilian biodiversity act; genetic heritage; traditional knowledge (TK); ABS (access and benefit-sharing); rule of law.

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Riassunto

Questo articolo ha un obiettivo chiaramente definito: analizzare gli aspetti socio-ambientalmente ingiusti della legge brasiliana della biodiversità sull'accesso al patrimonio genetico e alle conoscenze tradizionali associate, evidenziando il fatto che si tratta di un esempio delle fallacie dell *rule of law*. In altre parole, quello che gli autori Ugo Mattei e Laura Nader (2013) chiamano "*the dark side of the rule of law*". Per raggiungere questo obiettivo, si dialoga con la tesi intitolata *Plunder* (2013) sviluppata da questi due autori, mettendola in relazione con la percezione critica, da parte degli autori del presente articolo, circa l'uso della legge sulla biodiversità brasiliana ai fini del saccheggio del patrimonio genetico e dei saperi tradizionali. Infine, con il dialogo fatto con Ulrich Beck (1986) e la sua *Teoria della società del rischio*, si è potuto concludere che il processo di espansione del diritto positivo, aggiunto al suo concetto di *irresponsabilità organizzata tra scienza, politica e diritto*, può essere letto in congiunzione con quella che abbiamo identificato come *l'irresponsabilità organizzata del permesso di sfruttamento economico del patrimonio genetico e dei saperi tradizionali*. Avendo anche come attori la scienza, la politica e il diritto. Come ricercatori, è nostro dovere contribuire a un altro tipo di scienza, sperando che possa influenzare positivamente altri risultati nelle ultime due arene. La metodologia seguita è stata quella sistemica e la tecnica di ricerca si è basata sulla revisione della letteratura e sull'interpretazione delle norme legali e dei decreti normativi.
Parole chiave: legge brasiliana sulla biodiversità; patrimonio genetico; saperi tradizionale; accesso e condivisione dei benefici; rule of law.

■ Introduction

When talking about the Brazilian Biodiversity Act, n.º 13.123 of 2015, first of all it is extremely opportune to recapitulate the scenario of the emergence of the norm, of extreme loss of biodiversity, in which, during the debates and studies that took place within the scope of the Biodiversity Convention, the main pressures on biological diversity were identified, and one of the main loss factor was over-exploitation. It is precisely in this scenario of debates, that a legal framework on access to biodiversity and traditional knowledge should be internalized in the countries. That is, at no time did the debates within the CBD draw attention to the need to develop domestic legislation that would reduce the sharing of benefits[3]. However, this statement is the one

[3] It is important to make it clear that it is not the authors' understanding to consider the issue of benefit-sharing as a central strategy for the protection/conservation of biodiversity. On the contrary, they understand that this ends up greatly simplifying a complex issue, generating the monetization of Nature. In this sense, when the term "benefit sharing" is used in the present article, the expression is not being used in the sense of considering it as "the solution" for the