

Larger Questions

“Michigan Farm News” is a publication of the Michigan Farm Bureau. In its 15 March 2013 issue Mr. Paul W. Jackson published an editorial article titled, “Big versus small at core of Supreme Court case” referring to Bowman v. Monsanto. The case was heard by the high court on 19 February 2013 and centers on the question of “patent exhaustion.” Essentially, when has a patent holder’s right to profit from their original, non-obvious solution to some situation been “paid in full?”

[Article online at: <http://www.michiganfarmbureau.com/farmnews/transform.php?xml=20130315/cover.xml>]

Modifying soybean genes to elicit an unnatural expression of tolerance to Monsanto’s glyphosate herbicide is the underlying patent. “Biotech” is the benign media label in wide use and protecting their “agricultural technology” has been the subject of many legal enforcement actions by Monsanto.

“Technological” change has affected not only the way seeds are sold and saved it has also provided the opportunity for anyone with an internet connection to actually listen to the proceedings of Supreme Court cases. I would suggest that Mr. Jackson take advantage of that opportunity and listen to that court’s hearing of the Bowman v. Monsanto suit.

If he would listen he might discover that “Big versus small” is neither the “core” of the case nor is it part of any of the parties’ arguments. Having conjured up a “David v. Goliath” view of the case, Mr. Jackson takes his licks at what he might term anti-biotech Luddites and ignores the questions that aren’t, but desperately need to be addressed regarding “biotech” and “patenting” seeds. Apparently it is enough for him to believe that Monsanto is the aggrieved party and deserves to prevail.

Jackson’s invented story mostly tries to justify Monsanto’s “research and development” of soybean genetic manipulation as the savior of hungry people around the world. If the corporation doesn’t get their return on investment, one that “takes a bigger cut from the farmer, perhaps, but...leaves enough on the table...for the farmer to use it,” humanity will lose “the race to feed nine billion people.”

Torturing the facts as he has and in trying to apply CPR to the bankrupt mythology of American farmers “feeding the world,” Mr. Jackson arrives at this astounding inverted conclusion: “Wisdom...says it’s not wise to bite the hand that feeds you, even if it is a hand as big as Monsanto’s.” Mr. Jackson’s “wisdom” concludes that Monsanto feeds the farmer.

I see two questions that must be investigated and argued regarding direct genetic modification of seeds and the profits to be garnered from their commercialization. The first is a question of law. Monsanto’s lawyer Mr. Waxman stated to the court that the USDA granted a license to Monsanto for their “transformation event,” modifying the genetic structure of a soybean plant cell. He stated, “It’s illegal to do it unless you get a government license to do it.”

Here’s the question: does the USDA have authority to grant such a license? If they do, Congress must have enacted a statute to convey such authority to them because they cannot simply claim that authority by fiat. Congressional authority resides in our Constitution where the powers delegated from the People to Congress are specified. Does the Constitution give authority to Congress to decide to modify the genetic structure of

anything? It is a most important question, certainly more important than deciding that the sale of alcoholic beverages should be outlawed and *that* required a Constitutional amendment; one which was subsequently repealed.

The second question has to do with “patenting” seeds and whether such an idea even passes the “sniff” test. Patent rights make sense to me when they are human effort applied in original, non-obvious solutions serving human needs or interests. Monsanto, perhaps contrary to popular belief, *did not invent seeds*. The Creator of this world invented seeds. Fortunately He has not, so far, legally asserted *His* patent rights, although wisdom recommends 10%. Also attributed to His hand are the genes as well as the genetic “code,” which, although “mapped” by human investigations, are not even half understood by those who play Tinkertoy with those structures in their efforts to “make things better” or, more crassly, simply to “make money.”

In his first volume of How Plants Are Trained To Work For Man, Luther Burbank pointed out that “The seed is but a bundle of tendencies.

“When those tendencies have been nicely balanced by a long continuation of unchanging environment, the offspring is likely to resemble the parent.

“But when, through a change of environment, or through crossing, that balance is disturbed, no man can predict the outcome.

“So when such a seed is planted, no man can be sure whether the twentieth-century tendencies will predominate or whether long-forgotten tendencies may suddenly spring into prominence and carry the plant back to a bygone age, in some of its characters.”

[pp.105-6; © 1921. P.F. Collier & Son Co., New York]

Our Creator has spent many, many more years developing appropriate plants for human and animal nutrition than have the lab techs with their “gene guns.” Humans have outpaced His natural process by selective breeding, novel cross-pollination and hybridization of all sorts of plants. Burbank’s approach was based on understanding the process of the plants and their seeds and their history of interaction with their environment, not simply manipulating their genetic chemistry and structure to show our dominance. Our reach exceeds our grasp and yet we have allowed commercial property rights to prevail over fundamental natural interests.

My preference for dinner continues to be as close to the natural and as far from the Tinkertoy as I can have it. The point here is that such a preference is ever less available through no choice of mine. Diminishing choices are dictated by the commercialization of “patent rights” bestowed, in my view unlawfully, on Monsanto by a government that was created to protect my individual liberties.

These questions are *not* involved in the *Bowman v. Monsanto* case as it was argued before the Supreme Court. That is disappointing but apparently Mr. Jackson was more interested in defending Monsanto’s demigod position “feeding farmers” than he was in finding the more important questions human beings are staring at on their dinner plates.

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