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Becoming a Victim of Pesticides: Legal Action and Its Effects on the Mobilisation of Affected Farmworkers

Jean-Noël Jouzel ^a, Giovanni Prete ^{b,*}

^a *Centre de sociologie des organisations (CSO), 19, rue Amélie, 75007 Paris, France*

^b *Institut de recherche interdisciplinaire sur les enjeux sociaux (IRIS), Université Paris 13, UFR SMBH, 74, rue Marcel Cachin, 93017 Bobigny cedex, France*

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Abstract

This article analyses the effects of legal action on the mobilisation of farmworkers suffering from illnesses they link to the use of pesticides. It draws on a qualitative survey conducted with members of the Phyto-Victims Association, a protest organization comprised of sick farmworkers, their families, and the legal professionals who support them. Using this material, we retrace the paths taken by these farmworkers to obtain recognition for their status as pesticide “victims”. We describe the ambiguous effects of the law on this process at both individual and collective levels. We show how the law helps farmworkers to see their illness as an injury requiring compensation and to consider themselves as “occupational victims”. We also suggest that legal action prevents a full exploration of the responsibilities involved, and may trap farmworkers in a reductive face-off with pesticide producers.

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On the morning of 29th November 2013, a group of ten or so farmworkers, mainly farmers, held a meeting in a room made available by a communist local government in a Paris suburb. These men and women had come from all over France to attend an extraordinary general meeting of Phyto-Victims (victims of pesticides), a national association which since its creation in 2011

has been denouncing the effects of pesticides on farmworkers' health and assisting those who believe themselves to be "victims" of these products with medical and administrative formalities. The main object of the meeting was to vote on a modification to the association's statutes in order to facilitate any future involvement in legal proceedings. A lawyer was present at the meeting. As a partner in a large Paris practice specialising in public health matters (most specifically in asbestos-related cases) he has acted as legal advisor to the majority of the association's members. On that particular day he gave a lengthy presentation during which he examined the possibilities for legal action. He carefully explained the technical subtleties of the law and set out the various remedies available to farmworkers wishing to argue their case as "pesticide victims". The farmworkers took this opportunity to thank the lawyer for his commitment on their behalf, to ask questions, or, more often than not, to tell their own personal stories. Each of these stories was further proof of the decisive role that the lawyer had played in the trajectory leading these farmworkers to join the Phyto-Victims Association. Some of them mentioned the fact that the lawyer had been very helpful in facilitating their medical and administrative procedures with a view to obtaining recognition of occupational diseases. Additionally, almost all of them pointed out how decisive his assistance had been in effectively prosecuting the pesticide manufacturers that the victims held to be mainly responsible for their health issues.

It was an astonishing picture. Nothing predisposed these men and women — most of whom made intensive use of pesticides on their farms — to find themselves at the heart of a joint action to denounce the impact that these substances have on health. They were owners of small enterprises with a tendency towards "right-wing" politics (as they put it), with no history as activists. As such, they were not predisposed to collaborate with actors (lawyers, researchers, association leaders) with political beliefs very different from their own. Nor were they predisposed to instigate, as "pesticide victims", legal proceedings which would often be lengthy, sometimes costly, always complex. The commitment of these farmworkers is the result of a long process which has led them — both privately and publicly — to take on the social role of "victim". The processual nature of most "victims' careers" (Ponet, 2009) has already been highlighted in the social sciences. Recognising oneself as a victim, designating an offender and claiming reparation is a series of steps which are by no means self-evident (Felstiner et al., 1981) and which require third-party intervention (Boltanski et al., 1984). More specifically, the words that the Phyto-victims exchanged during their general meeting on 29th November 2013 testify to the decisive role that legal action has played in this pathway. The specific aim of this article is to understand how the law has affected the victimary careers of farmworkers suffering from pesticide-related diseases, in both their individual and collective dimensions.

Several works have shown the extent to which the law facilitates "advancement" in this type of career. They highlight how it constitutes a powerful vector for the cognitive liberation of victims (McAdam, 1982), allowing them to become aware of the wrong they have been done (Felstiner et al., 1981) and to formulate it in legal terms (Ewick and Silbey, 1998). The law also offers frameworks with which to equate the separate cases of individuals who share common suffering and thus encourages the creation of victims' groups in support of a political cause aimed at the denunciation of an injustice (Lefranc and Mathieu, 2009; Roussel, 2009). Finally, even when it does not lead to full recognition of the harm endured, the law offers victims' groups indirect political advantages, such as increased public visibility (Latté, 2008). The mobilisation of Phyto-victims shows how the law facilitates victim mobilisation. Yet the law is not just a freely available resource for social movements: it is also a constraint. It directs the way that demands are framed and, above all, the way of thinking about the legal, moral, economic and political responsibilities at play in the situations which are denounced (Roussel, 2009). It necessarily causes victims wishing

to define themselves as such, to favour some options over others. The case of Phyto-victims illustrates certain aspects of this reductionist dynamic inherent to legal action by victims.

In order to take account of the effects of legal action, we will organize our argumentation into two parts. The first deals with how the law affected these farmworkers' trajectories before they began to interact with one another and, for some among them, created the Phyto-Victims Association. Our aim is to understand how the law has guided these farmworkers along a trajectory which might lead to activism. Most of them began their victimary trajectories by resorting to the legislation governing work accidents and occupational diseases¹. We will show that this area of law, originally designed to facilitate recognition and compensation for work-related physical injuries, has placed numerous administrative obstacles along these farmworkers' trajectories. We will also see that these obstacles have the paradoxical effect of making it easier for these farmworkers to take on the identity of victims and constitute an explanatory factor for their later commitment to mobilising Phyto-victims². In the second part of the article, we look at the post-2010 development of the Phyto-Victims Association. We will show that the construction of this association was closely linked to the law, through the mediation of a lawyer who already had considerable experience in occupational health cases relating to toxic substances. The legal strategy developed by this lawyer in conjunction with the Phyto-victims fulfilled a classic function of cognitive liberation, through which the law revealed to the farmworkers the responsibilities incurred by the outbreak of their disease. However, this strategy might also "imprison" the Phyto-victim farmers in a simplistic face-off with potential "persecutors" and undermine the complexity of the responsibilities involved³.

1. Improbable victims: the difficult recognition of pesticide-related occupational diseases

The Latin etymology is clear: pesticides are products designed to kill (*caedere*) plant pests (*pestis*) which are living organisms: insects, weeds, fungi. They are dangerous products; when farmworkers handle them, they are exposing themselves to accidents and disease. The use of such products has for a long time been governed by regulations (Fourche, 2004; Jas, 2007), one of the purposes of which is to ensure the protection of the farmworkers who use them. However, recent epidemiological studies have highlighted the loopholes in these regulations, indicating a

¹ Workers in the farming sector are covered by a specific social security regime. The social benefits of the work accident and occupational disease branch of this regime were for a long time reserved for agricultural workers alone, farmers being considered responsible for their own working conditions. Since 2002, farmers have been able to obtain recognition and lump-sum compensation for work-related accidents and diseases. On this regime, see Jouzel and Prete, 2014.

² It should be noted that the vast majority of the farmworkers studied here have followed a complete victimary trajectory, from awareness of their status as victims of pesticides through to their participation in collective protest. They are not representative of other farmworkers whose victimary trajectories came to an end at an earlier stage, for example following a refusal by their social security organisation to recognise the occupational nature of their disease.

³ This article is based on an ethnographic study of the Phyto-Victims Association carried out over a three-year period, with financial support from Anses' call for health-environment-labour research projects. It is based on interviews, including approximately twenty in-depth biographical interviews (between 2 and 5 hours) with the farmworkers who founded the Phyto-Victims Association or who joined it after its creation. Approximately ten of these interviews took place in the presence of the farmworker's family (spouse, child or parent). A series of additional interviews (N = 20) were carried out with professionals in the fields of law, medicine, science and prevention, and with union or environmental activists whom the farmworkers had met during the course of their victimary trajectories. In addition, there was observation of events which have punctuated the life of the association since its creation in March 2011: general meetings, executive board meetings, demonstrations, etc.

probable link between certain chronic diseases (mainly blood cancer and Parkinson's disease) and occupational exposure to pesticides⁴. Over the last decade, several dozen French farmers affected by this type of pathology have attempted to gain recognition for their status as pesticide victims. This quest for recognition has essentially taken place within the legal context of compensation for work accidents and occupational diseases. We will retrace the medical and administrative trajectory of these farmworkers and show how the difficulties that they have encountered have increased their commitment to the social role of pesticide victims.

1.1. Thwarted entry into the trajectory of a farmworker victim of pesticides

The trajectory of farmworkers victim to pesticides began well before their first legal action. The prerequisites for their entry into the law governing work accidents and occupational diseases appear to have acted as powerful filters which limited recognition of the effects of pesticides on their health⁵. For the very few farmers who applied for recognition of a pesticide-related occupational disease over the last decade, this was almost never an obvious decision. Given that they fell ill when they considered themselves as being in good health and leading an active life, chronic disease was experienced as a “biographical rupture” (Bury, 1982) and their initial reaction to their health problems – and that of their families — was to concentrate their efforts on finding an effective therapy which would allow them to “return to normal” as quickly as possible, particularly as far as work was concerned. Generally speaking, the question of a possible link with pesticides only arose later on, when they had come to accept that their health would be affected on a long-term basis and that they needed to engage in a lengthy process of medical treatment. In most cases, this etiological hypothesis was first mentioned by a third party (spouse, neighbour, etc.) who was already concerned about the potential dangers of pesticides⁶. In other cases, it was through interaction with healthcare personnel — with doctors in specialist departments in particular (haematology, neurology) — that the sick farmworkers became aware of the possible link between their suffering and the pesticides they had been handling throughout their working lives.

Yet when this link was taken into consideration, it did not automatically lead to a request for recognition of an occupational disease. As far as the farmworkers were concerned, perceiving themselves to be sick as a result of exposure to pesticides did not mean taking on the identity of victim of a harm which entitled them to compensation. Very often they first blamed themselves and their own negligence for their suffering. Some of them felt “responsible for their suffering”⁷, that they had “been a bit stupid”⁸ in not taking sufficient precautions. This conception of one's intoxication is a powerful obstacle to entry into the work accident and occupational disease recognition procedure, and is one of the underlying reasons for the very low number of applications for recognition filed in relation to pesticide exposure. In 2010 for example, only eight such requests by farmers exposed to pesticides were made in relation to Parkinson's disease, and six others in relation to blood disorders.

⁴ See Inserm's collective expertise report, “*Pesticides, effets sur la santé*”, published in 2013.

⁵ For further details on this point, see Salaris, 2014.

⁶ On the importance of third parties in guiding sick people towards etiological action within the framework of victims' trajectories, see in particular Barthe, 2010.

⁷ Interview (July 2012) with the widow of a farmer (mixed-crop and livestock farming) who in 2011 had died of a cancer recognised in 2006 by the MSA as being of an occupational nature.

⁸ Interview with a farmer (cereals) with neurological disorders following exposure to a pesticide, June 2011.

More than a cultural reading focusing on the special relationship people might have with the body in the rural world, this observation calls for an understanding of how, over the long term, policies designed to prevent occupational intoxication from pesticides have framed this type of bodily harm. Since 1943, pesticides have been subject to a marketing authorisation granted by the French Ministry of Agriculture on the basis of an *a priori* risk assessment which, for each pesticide, uses models to measure the occupational exposure that is expected and determines an “acceptable” threshold. This risk assessment is carried out by the manufacturers who market the product and who, under supervision from the appropriate authorities, must demonstrate that the level of exposure to their product is below a threshold acceptable under normal conditions of use ⁹ — characterised by a mode of spraying the product, a maximum quantity per hectare and meteorological conditions. If the estimated exposure level remains too high, the manufacturer has the possibility of reducing it by making recommendations for the use of protective clothing (gloves, masks, suits). In this respect, prevention policies have for a long time emphasised the fact that users’ protection from pesticides depended on their own capacity to follow a set of recommendations provided for their attention on the product labelling. The implicit consequence of this framing is to blame any product-related bodily harm on insufficient vigilance on the part of the farmworker victims, and to urge the latter to accept their fate.

So it is often through interaction with third parties that this definition of the situation can evolve. The family, in particular, might encourage the farmer to start a recognition procedure by explaining the material advantages which may be gained. They might emphasize the threats that the disease leaves hanging over the continuity of the farm. This road to legal action is initially conceived less from a standpoint of repair than as one of the several windows available to the farmworker and his/her family in order to obtain material and financial “aid” which will allow them to continue their professional activity in spite of the disease. Indeed, some of them need to follow intensive medical treatment (chemotherapy for the most part), and all of them have to cope with a reduction in their work capacities which forces them to envisage the potential bankruptcy of their farm: aside from one young wine grower, deceased, none of the farmers who are members of the Phyto-Victims Association have had to definitively cease work due to their disease, but several have had to deal with significant material and financial difficulties.

1.2. Recognition “before the law” of occupational diseases

The farmworkers who took the leap and launched a procedure of recognition of an occupational disease initially only had very vague notions of how the work accident and occupational disease branch of their social security regime worked. At the point in time when they made the decision, they sometimes found it hard to see how it differed from other available procedures such as social assistance, help for the disabled or non-compulsory private insurance coverage. They nevertheless had expectations “before the law” governing repair for occupational diseases (Ewick et Silbey, 1998). By using this term, we are suggesting that — generally speaking — they initially saw the work accident and occupational disease branch of the law as a rational and relatively impartial system which might offer them the material wherewithal to continue their professional activities through administrative recognition combined with financial compensation; this would allow them, for example, to employ a part-time worker. In order to understand how their subsequent experience

⁹ For an analysis of these policies and their effects on the recognition of occupational diseases relating to pesticides, see Décosse, 2013; Jouzel and Dedieu, 2013.

with this area of law caused a shift in their relationship with the law, we need to remember certain of its characteristics.

The French work accident and occupational disease system was originally designed to facilitate recognition of work-related bodily harm (Ewald, 1986). It is based on a principle of presumption of accountability. Where there is an established causal link between their work and the deterioration of their health, farmworkers do not have to prove that a third party's responsibility is incurred in order to obtain compensation. Application of this principle is based on a system of occupational disease tables which set out: the pathology or pathologies entitling a person to a lump-sum compensation; the indicative or restrictive list of jobs with a risk factor; the "time limit for claiming compensation", defined as the maximum amount of time allowed between the end of occupational exposure to the risk factor(s) and the onset of the first symptoms. With the agricultural social security regime, managed by Mutualité Sociale Agricole (MSA), it is up to the medical advisor from the local MSA office of the farmer making the claim to verify that the table's administrative conditions have been met and to determine the level of any permanent impairment upon which lump-sum compensation will be based. If he/she meets the table's conditions, the farmworker will automatically be entitled to compensation, even if he/she has been exposed, outside his/her work, to other risk factors equally likely to have been the cause of the disease in question.

However, this system does little to facilitate the recognition of occupational diseases relating to farmworkers' exposure to pesticides. Of the agricultural regime's 58 occupational disease tables, only half a dozen concern pesticides. The majority of the latter relate to diseases caused by notoriously dangerous pesticides which were withdrawn from the market many years ago, such as arsenic and its derivatives. The only exception is table 58, created in July 2012, which recognises the link between Parkinson's disease and pesticides *in general*. Whilst it undeniably facilitates — albeit with major limitations¹⁰ — the recognition of certain occupational diseases relating to pesticides, because the date on which it was introduced was posterior to the creation of the Phyto-Victims Association, it was of no benefit to the farmworkers who initiated this joint action. In order to obtain recognition, the latter were obliged, for the most part, to use two additional options in order for their diseases to be administratively recognised as occupational.

The first option consisted in using a table which, whilst it does not explicitly mention pesticides as a risk factor, recognises the links between certain cancerous pathologies and substances which might be contained in marketed pesticides. This is particularly the case with table 19 of the agricultural regime, which concerns "blood disorders caused by benzene and all products containing benzene". Benzene is not an active substance with a phytosanitary effect, but is used as a co-formulant in several pesticides. Several farmworkers have been able to use this table to gain recognition for the occupational origin of certain blood cancers (proliferative myeloma, leukaemia). However, the labelling of co-formulants present in phytosanitary products is not obligatory, and it remains difficult for farmworkers to identify products containing benzene.

The second option is to take the additional path introduced by the law dated 27 January 1993 and to make an application to a regional committee for the recognition of occupational diseases (Comité régional de reconnaissance des maladies professionnelles (CRRMP)). There are then two possibilities. The first is that the farmworker has a disease mentioned in an occupational disease table, but that he/she does not meet the required administrative conditions. In this case he/she must demonstrate that there is a "direct" link between the disease and the risk factors to which

¹⁰ The table introduces a time limit of one year, which, given the latency period for Parkinson's and the uncertainty surrounding its initial diagnosis, makes any large-scale recognition unlikely.

he/she has been exposed during the course of his/her work, by highlighting the elements which objectively demonstrate exposure to these factors and by showing that the chronology of exposure and symptoms is compatible with occupational etiology. The second possibility is that there is no occupational disease table relevant to the farmworker's situation; he/she must then provide proof of a "direct and essential" link between his/her work and the disease, i.e. he/she must show, in addition, that the incriminated occupational exposure(s) play a preponderant role in the genesis of his/her disease¹¹.

Whatever the path taken, it is never simple and always requires considerable work in gathering the evidence proving exposure to pesticides and supporting the hypothesis of an effect on health. At the very minimum, farmworkers must delve into their accounts and order books (if they have been kept) to track down the products they have used. Even when proof of purchase for the phytosanitary products has been gathered, organising it into a file to be sent to the CRRMP is a task for which farmworkers and their families are rarely prepared. They very often need help from family members or friends who are "workaholic, motivated, dedicated"¹², or from legal professionals, lawyers or jurists from associations specialising in this type of litigation.

The case of Dominique M., a cereal farmer in the east of France suffering from myeloproliferative syndrome, who had throughout his working life sprayed the crops of a large family farm on his own, is a good illustration of the difficulties inherent in these types of medical and administrative procedures. Encouraged by his wife, who had for several years been dubious about the pesticides he was using, largely due to their unpleasant smell, he gradually entered a trajectory of pesticide victim, following diagnosis of his disease in 2002. First of all he agreed to meet a hospital doctor specialising in occupational diseases, who advised the couple of a possible link between the disease and exposure to benzene, a solvent widely known for its cancerous effects on blood. Mrs. M. then examined the agricultural disease tables and discovered the existence of table 19. Her husband agreed to apply to the MSA for recognition, letting his wife compile the file. She used the pesticide order books carefully preserved by her husband to draw up an exhaustive list of the dozens of products that he had used over the years. The MSA's regional medical advisor refused to grant recognition, mainly basing his decision on the argument that since the 1970s pesticides no longer contained benzene. In 2004, the couple decided to file an appeal before the social security court (Tribunal des affaires de sécurité sociale (TASS)). Mrs. M. began to search for information on the precise composition of the products her husband had used, and to this end she contacted the cooperative which marketed them, the French ministry of agriculture and the national institute of agronomic research (Institut national de la recherche agronomique (Inra)), the main French public research body on agriculture. Her enquiries remained fruitless; she was told that trade secret restrictions made it impossible to communicate such information. At the same time, the couple hired a lawyer who obtained an order from the Court for the expertise of the composition of the products used by the farmworker. The Court ordered the expert "to determine if one or more of the products analysed contained any benzene, even in minimal doses, or any benzene derivative likely to cause a myeloproliferative syndrome"¹³. Mrs. M. found samples of the products her husband had used and sent them to a laboratory which analysed their composition. Approximately half of

¹¹ Despite the existence of guides for the CRRMP, the notions of "direct" link and "direct and essential" link can be variously interpreted or even ignored by medical experts, thus creating uncertainty and inequalities between insured persons.

¹² Interview in August 2012 with the wife of a farmworker (mixed crop and livestock farming) recognised in 2009 as having an occupational disease, namely Parkinson's disease.

¹³ Extract from the conclusions of TASS in the Vosges region, 13 July 2005.

the products tested contained benzene. On the basis of this expertise, in March 2006 the Court ruled for recognition of the occupational nature of Dominique M.'s myeloma.

This example illustrates the numerous constraints faced by farmers who believe their illness to be linked to pesticide use. For those who meet all said constraints and who see the recognition procedure through to the end, the result remains very uncertain. As a case in point, in 2010 the CRRMPs refused five of the eight requests for recognition made by farmers suffering from Parkinson's disease, and five out of the six requests relating to blood disorders.

1.3. When the trajectory makes the combatant

Despite these difficulties, over the last decade several dozen farmers have succeeded in obtaining recognition of an occupational disease caused by their exposure to pesticides. The effects of this administrative recognition on the construction of their victimary identity remain extremely ambiguous. Work accident and occupational disease legislation recognises work-related bodily harm and spares farmworkers from having to demonstrate the responsibility of a third party (employer, supplier of toxic products, etc.). Whilst this "elision of responsibility" (Donzelot, 1984) theoretically facilitates administrative recognition, it creates a paradoxical category of "crimeless victims" (Lippel, 1988) who are not encouraged by law to hold a third party responsible for their suffering. In this respect, work accident and occupational disease legislation does not give farmworkers who gain recognition the wherewithal to attach to said recognition a moral meaning embedded in a grammar of what is just and unjust (Agrikoliansky, 2010). For some farmworkers, especially those who encountered no particular difficulties with the administrative procedures, the victimary trajectory comes to an end with the official recognition of the occupational origin of their disease¹⁴. Given the doubts they sometimes have regarding the etiology of their disease and their own responsibility for the latter, these farmworkers simply accept the recognition provided by the work accident and occupational disease legislation and the material benefits it brings. The considerable distance that they maintain from a pesticide-victim identity can be seen in their reluctance — publicly and in the media — to claim that they are "victims of pesticides".

On the other hand, the recognition procedures have encouraged some farmworkers to take on the role of victim for the very reason that they create difficulties, through various mechanisms. The first of these is the increasing difficulty some farmers have had in understanding the administrative demands made of them or the responses they have received from the organisations to which they submitted their cases (MSA medical advisors, CRRMPs, TASSs). Several of the farmworkers who began procedures in the 2000s readily interpreted such elements as clear signs of the ill will of the agents with whom they were dealing. They sometimes felt persecuted by these social security organisations, to which they had paid their dues without receiving any benefits in return. This sentiment was reinforced by the fact that the decisions of the MSA's medical advisors were sometimes based on ill-defined medical and legal categories¹⁵. For the majority of farmworkers

¹⁴ On this point our study hit a major empirical wall: due to medical secrecy, the MSA's doctors generally refused to tell us the identity of the farmworkers who had requested recognition of a pesticide-related occupational disease, or to put us in contact with them. This meant that the vast majority of our contacts with farmers were made via the Phyto-Victims Association. As a result, we only encountered a few rare cases of farmworkers who had been recognised as having an occupational disease but who were not members of the association.

¹⁵ This is, for example, the case with the notion of "stabilisation". Until March 2012, in order to obtain recognition of an occupational disease outside of a table, an insured person had to obtain a statement from a medical advisor whereby his/her disease was considered to have "stabilised" at a level of permanent disability greater than 25%. Several farmworkers

we interviewed, the impression of dealing with an opaque and arbitrary law legitimised the feeling of truly being “victims” and nourished their determination to fight “to the bitter end” to achieve greater recognition.

Secondly, the difficulties that they encountered during their recognition trajectories often caused farmworkers and their families to set out on a quest for information, for “tips” which would allow them to play “with the law” (Ewick et Silbey, 1998) and thus maximise their chances of success. To this end they mainly consulted the Internet¹⁶ and both the trade and general press, where they found two types of possible support. First of all, their quest for information sometimes led them to identify cases of farmworkers who were suffering from similar pathologies to their own and who had obtained recognition due to their exposure to pesticides. In addition to the fact that such discoveries encouraged them to persevere with their own recognition procedures, they also more fundamentally strengthened their belief that there was indeed a link between their suffering and the pesticides that they had used. Additionally, some of the individuals and families concerned entered into contact with one another, thus constituting the first steps in a shift from individual engagement in a quest for recognition, towards a structured collective action. Their search for information in the media also led farmworkers and their families to identify resource-actors: scientists who had worked on the links between pesticides and their diseases, journalists or environmental activists¹⁷ who could help them strengthen their cases. These actors provided farmworkers with information on the specific scientific data available or on other cases similar to theirs. But above and beyond such practical information — often decisive in the success of recognition procedures —, they provided the farmworkers who contacted them with interpretative frameworks that encouraged them to perceive their disease as a genuine injustice.

We should mention here the emblematic case of Paul François, a Charente crop farmer who has been suffering from neurological disorders since 2004¹⁸. After a lengthy procedure, in 2010 the MSA recognised the link between these disorders and massive accidental exposure to a phytosanitary product. After his accident, and due to the worrying continuation of his symptoms, this farmworker contacted toxicologists who confirmed that his problems were indeed caused by the pesticide he had inhaled and not by the other causes put forward by the medical profession (nervous breakdown in particular). Furthermore, these toxicologists, who were already involved in other cases of workers suffering from occupational diseases caused by toxic substances, encouraged him to consider the company which had manufactured the product (Monsanto) as being responsible for his disorders. One of the researchers was none other than Henri Pézerat, principle French whistle-blower in the asbestos case. He put P. François in touch with a firm of lawyers (Teissonnière et Associés) specialised in defending workers in occupational health cases, and with

suffering from neurodegenerative diseases were told that their requests for recognition would not be passed on to the CRRMP because as their diseases were highly evolutive, they could not be considered as stabilised. In March 2012, the notion of stabilisation was loosened.

¹⁶ We must not forget the role that the democratization of Internet access played during the 2000s. All of the farmworkers who began an occupational disease recognition procedure during that period and who then joined the Phyto-Victims Association mentioned this source of information as a preferred means of exploration.

¹⁷ Among these actors we find scientists such as Henri Pézerat and Francis Rocchiccioli, journalists and documentary filmmakers such as Estelle Saget, Marie-Monique Robin, Vincent Nouzille and Jean-Paul Jaud, and environmental activists such as François Veillerette, founder of the Générations Futures association, and Jean-Claude Cauquil, an apiarist involved in the fight against phytopharmaceutical firms.

¹⁸ This case is the object of specific analysis in Jouzel and Prete, 2013.

an NGO (Générations Futures¹⁹) involved in the fight against the harmful effects of pesticides on health and the environment. In meeting those actors, P. François began to reconsider his stance on Monsanto: whereas he had initially seen the company as a possible ally in the search for an effective therapy, he now accused them of having deliberately hidden the dangerous nature of the product that had poisoned him, and with his lawyer he began civil proceedings against them.

The farmworkers met with various persons whilst trying to circumvent the difficulties encountered during their medical and administrative recognition procedures. These encounters gradually led them to see themselves as legitimate victims and strengthened their belief that their problems were caused by pesticides. Above all, they helped them to give moral meaning to this causal link: whilst work accident and occupational disease legislation attempts to marginalise the notion of fault, the obstacles it places in the farmworkers' way end up having the opposite effect, putting the latter on the track of the actors responsible for their situation. These encounters punctuated the creation of a more and more dense and combative network of sick farmworkers' families, environmental activists, lawyers and scientists. This network was to gradually take the form of a structured collective action to denounce the dangers that pesticides presented to farmworkers in their fields. In January 2010, a dozen families met for the first face-to-face meeting in Ruffec in the Charente region, on P. François' farm. A year later, in March 2011, these same families met again at the same place to officially found the Phyto-Victims Association, which has ever since been fighting for greater recognition for pesticide-related occupational diseases, for stricter control of products and for the banning of the most dangerous among them. The difficulties that these farmworkers have encountered in trying to gain recognition for their occupational diseases have been a major vector for their commitment to a cause which is, *a priori*, far removed from their political socialisation²⁰.

2. From the individual to the collective: the Phyto-victims cause taken up by the law

The choice of the name "Phyto-victims" is significant. The farmworkers are sending out the message that above and beyond the diverse nature of their pathologies and individual trajectories, they share the same experience and the same identity which they will defend in the public space and in legal arenas: that of having used pesticides during the course of their professional activities, and of now suffering from the pathologies caused by those products. The law has played a determining role in aggregating their separate *cases* into a collective *cause*. It has given farmworkers the wherewithal to see themselves as victims, to act as such, to publicly legitimise the figure of "farmworker victim of pesticides" and to denounce those responsible for their suffering. However, the law is not a resource that is spontaneously available for collective action. As with many other social movements, making use of the law means working with a professional who will interact with Phyto-victims to construct a strategy of recourse to a range of jurisdictions likely to recognise the harm that pesticides have caused to farmworkers.

¹⁹ A presentation of the stances taken within this association may be found in a book co-written by its chairman. See Nicolino and Veillerette, 2007.

²⁰ Of course, the difficulty of recourse to work accident and occupational disease legislation is not the only factor behind the commitment of these farmworkers' to a victimary trajectory. Among the other elements encouraging such a commitment we might mention the relations (sometimes conflictual) that these actors have with the medical profession, or with the political institutions — unions in particular — in the agricultural world.

2.1. A legal professional's increasing involvement in the cause

Many authors have emphasised the role that legal professionals play in the dynamic of social movements (see in particular the collective work directed by [Sarat and Scheingold, 2006](#)). Using the term *cause lawyering* ([Sarat and Scheingold, 1998](#); [Israël, 2001](#)), they describe the activity of these professionals (lawyers, jurists) and emphasise the determining role that they can play in giving a general meaning to individual complaints and in turning a disparate set of cases into a political cause. The Phyto-victims cause has been marked by the intervention of one such professional, in the person of Maître Lafforgue, a lawyer at the Teissonnière law firm mentioned in the introduction. In order to understand his commitment, we need to look more closely at his meeting with P. François, through the intermediary of H. Pézerat. It was this toxicologist who recommended that the farmworker contact Teissonnière et Associés, with whom he had already worked on other legal cases relating to occupational poisoning. Teissonnière's lawyers have considerable experience in defending workers exposed to occupational poisons — victims of asbestos or glycol ethers, military veterans of nuclear tests, etc. However, in the opinion of Maître Lafforgue, P. François' situation seemed somewhat atypical when he took charge of his case. The lawyer was not used to defending business leaders, and even though H. Pézerat assured him that this case almost certainly prefigured dozens or even hundreds of other farmworkers victims of pesticides, he met with his new client without imagining for one instant that he was helping to constitute a new political cause. It was only gradually, as the procedure evolved, that he became convinced that P. François was not an isolated case and that there were many other farmworkers who had fallen sick due to pesticides. In January 2010, his attendance at the Ruffec meeting following an invitation from the NGO Générations Futures played an important role in this respect. It allowed the lawyer to discover several cases of sick farmers and to make contacts which would lead — sometimes months later — to his involvement in legal procedures: he was to take up (or return to) all of the case files of Phyto-Victims' founding members, either with a view to obtaining recognition, or to improve compensation already received as a result of an initial recognition of occupational disease. His role rapidly exceeded that of mere lawyer for the Phyto-victims: as more and more procedures were initiated — successfully for the most part — he became more generally the lawyer of the association itself, appearing in public as a defender of the cause of farmworker victims of pesticides. He agreed to meet journalists covering the issue and took part in several actions alongside Phyto-victims. For example, during a congress organised at the French Senate by Générations Futures in March 2012, he ran a workshop entitled "Occupational exposure to pesticides: from prevention to victims' rights" (*"Exposition des professionnels aux pesticides : de la prévention à la reconnaissance des droits des victimes"*).

The gradual increase in the number of favourable decisions in procedures to gain individual recognition for an occupational disease made Phyto-victims members more receptive to the pertinence of using the law as a means of taking action, thus strengthening the lawyer's resolve. The legal actions that he recommended to his new clients were henceforth more than mere offers of service: they formed the outline of a collective legal strategy, backed by the experience that the Teissonnière law firm had already acquired in other occupational health cases — the asbestos case in particular. From this perspective, obtaining recognition of an occupational disease is no longer an end in itself, but rather a preliminary to legal actions with two other objectives: to improve levels of financial compensation received by farmworkers on the one hand, and to legitimise their collective cause on the other.

2.2. *Constructing a strategy for legal action*

The publicization and legitimisation of the Phyto-victims' cause encountered a certain number of difficulties that Maître Lafforgue's legal actions aimed to circumvent. The first of these difficulties relates to the occupational aspect of the etiology of the diseases affecting Phyto-victims. From an insurance perspective, work accident and occupational disease legislation sets aside the notion of responsibility and only very partially recognises the victim status of the farmworkers concerned. As it dealt with the various occupational health cases with which it had been entrusted, the Teissonnière law firm gradually constructed a legal strategy which would enable it to circumvent this difficulty²¹, based on increasing the number of procedures for "inexcusable negligence"²² and on filing criminal complaints. These legal levers have led to better recognition of the harm suffered by asbestos victims and of the responsibilities at stake in relation to their suffering²³. However, the law firm cannot directly apply its experience to farmers claiming to be intoxicated by pesticides. Indeed, they present a unique characteristic compared to the other workers that the Teissonnière law firm has defended: they are, for the most part, self-employed farmworkers. As independent workers, their status as victims is even more difficult to claim in as much as they are a priori responsible for their own working conditions and cannot therefore blame an ill-intentioned or negligent boss. From a legal point of view, this singularity makes it impossible to claim "inexcusable negligence". On the contrary, some of these farmworkers are employers who might find one of their workers demanding recognition of "inexcusable negligence" against them. Although for the time being this has remained a mere possibility, it is discussed by certain members of the association and creates a possible source of division between them, depending on whether they are employed farmworkers or self-employed farmers. Similarly, the institution of criminal proceedings, which was undertaken in the asbestos case, is not yet on the Phyto-victims' agenda. Whilst the asbestos affair has demonstrated the symbolic strength of the criminal procedure when constructing victimary causes, it has also highlighted its difficulties. The criminal investigation into asbestos has been a lengthy process which has still not resulted in a trial. In this sense it has demonstrated the hostility of the French legal and political system towards the criminalisation of public health matters (Bertella-Geffroy, 2008). The Phyto-victims therefore remain reluctant to follow this legal path, thus forcing their lawyer to explore other legal means as a lever for their cause.

The first of these means has been to take civil action. This entails filing a complaint against a third party whose responsibility for the poisoning is engaged, and which, should it be successful, would lead to full compensation for the victim. Maître Lafforgue first used this type of legal recourse in 2007, in the P. François case. The first instance verdict was in his client's favour, sentencing Monsanto (the company which had produced the product inhaled by P. François at the time of his accident) to pay compensation. The verdict was based on evidence produced by the lawyer to show that the company had not correctly informed his client about the facts, of which

²¹ For an analysis of this legal strategy, see Henry, 2003, pp. 49-57.

²² Recognition of "inexcusable negligence by the employer" means that material compensation may be increased. During the asbestos affair, Teissonnière filed thousands of requests for the recognition of inexcusable negligence, forcing the appeal court, in 2002, to redefine inexcusable negligence as the result of an employer's failure to meet a duty to perform — and no longer a duty to be diligent — in relation to the health and safety of its employees.

²³ The criminal complaint filed by Teissonnière on behalf of the national association of asbestos victims (Association nationale des victimes de l'amiante) in 1996 was a way of publicly denouncing the responsibilities at stake: that of the firms which had organised the "misinformation" of the public with regard to the dangers of asbestos and that of the authorities in charge of prevention, guilty of "criminal abstention" concerning their duty of care.

it was aware, of the dangerous nature of its product. This initial legal success was an important step in building the Phyto-victims cause. Above and beyond the highly controversial nature of the Monsanto firm²⁴, this success publicly legitimised the notion, widely relayed by the general media, that farmworkers suffering from pesticide-related diseases were victims of strategies employed by the manufacturers of such substances to cover up or minimise their dangers. When the verdict was handed down, Maître Lafforgue emphasised the following point: “phytosanitary companies now know that they can no longer abdicate their responsibilities to public authorities or to users and that they will be held accountable”²⁵. Yet however effective this may have been from the standpoint of constructing the cause of pesticide victims, this strategy proved difficult or even impossible to reproduce in cases other than that of P. François. The latter presented the particularity of having been accidentally poisoned by a large dose of an easily traceable product the manufacturer of which could be identified — something that is generally impossible in other cases.

This restriction caused Maître Lafforgue to explore an alternative legal option to gain better recognition for the victimary status of the farmworkers: the commission for compensation of victims of criminal offences (Commission d’indemnisation des victimes d’infraction pénale — (Civi)). Under the French legal system, this commission makes it possible to fully compensate victims for bodily or material harm where the event is of the nature of a criminal offence, but where its perpetrator cannot be identified. Maître Lafforgue knew this avenue of legal action well, having already used it in asbestos-related cases. In 2011 he used it for the first time for a pesticide victim, in the case of Dominique M. mentioned above. The latter had been recognised as having an occupational disease under table 19 of the agricultural social security regime, relating to benzene poisoning. Benzene was present in several of the products he had used, but he was unable to determine which company was responsible. On the other hand, Maître Lafforgue noted that the labelling on the products in question gave insufficient information on their dangers. Whilst the regulations only require labels to mention the names of active substances (and are not therefore obliged to indicate the presence of benzene as a solvent), they must nevertheless list the nature of the risks to users and the precautions that users should take to protect themselves. Benzene being a well-known carcinogen, the lawyer put forward the argument that the manufacturers should have informed users of this specific risk and indicated the required means of protection, which was not the case for several of the products used by Dominique M. Considering this lack of information to constitute a criminal offence, on 23 January 2012 the Court decided to fully compensate the farmworker for the harm caused. New procedures of the same type are currently underway for other Phyto-victims, and would now appear to be the way forward for full recognition of farmworkers suffering from pesticide-related diseases.

2.3. *The fiction of good labelling: the experience of the law and its blind spots*

Recourse to judicial institutions greatly strengthened the adherence of the founders of the Phyto-Victims Association to their victimary identity, by helping them to see their suffering as the consequence of criminal acts committed by third parties, from whom compensation could legitimately be demanded. The law gave Phyto-victims frameworks which allowed them to consider and formulate their diseases as an injustice, and their experience of the legal proceedings directly and indirectly favoured their conversion into *accusing victims* (Barbot and Fillion, 2002).

²⁴ On this subject, see the well-documented work of journalist Marie-Monique Robin (2008).

²⁵ Maître Lafforgue, quoted in *Le Monde*, 13 February 2012.

Phyto-victims who engage in legal action are directly led to see themselves as victims of the actors against whom the procedures are initiated. In this respect the P. François case is illuminating. When he followed his lawyer's advice and began a civil action against Monsanto in 2007, he was still far from convinced that the company was responsible for his suffering. His complaint was therefore essentially linked to the fact that a legal limitation period was about to expire. It was only as proceedings moved ahead that he began to see himself as a victim of the American firm's lie about the toxicity of the product he had inhaled. This was especially the case when he gained access to some pesticide registration documents issued by the Belgian ministry of agriculture which showed that Monsanto had been aware of the toxicity of its product since the 1980s, but had not informed the French authorities. The civil action thus influenced the construction of P. François' identity as a victim not only of pesticides, but also of the manufacturers who marketed them. It was a catalyst for his growing commitment to a collective action that he would later lead (Jouzel and Prete, 2013).

More indirectly, farmworkers who have not yet taken any legal action outside the law on work accidents and occupational diseases are reconsidering their situation in the light of their observations of the procedures initiated by other members of the association. In their eyes, the first instance successes of P. François and Dominique M. are proof of the liability of the pesticide companies concerned, and several other association members are thinking about taking similar steps, particularly before the Civi. In this regard, note that whilst this avenue of compensation is often described by legal commentators as a procedure which undermines the identification of responsibilities at stake in public health matters (Neyret, 2008; Bertella-Geffroy, 2008), pesticides victims see it as a means of "attacking the companies" and incurring their liability. It is important to make the distinction between the philosophy of the legal device — a means to broader compensation — and its significance for farmworkers belonging to the Phyto-Victims Association, through the mediation of their lawyer. From a legal standpoint, the increasing number of cases brought before the Civi might encourage the fund which compensates victims to try to identify the perpetrators of the offences in question and to take action against them through subrogatory actions. Despite its low probability²⁶, this outcome — which the Teissonnière law firm presented to Phyto-victim members — structures their perception of this legal process.

The law therefore encourages Phyto-victims to frame their suffering as an experience of moral prejudice and offense. Yet this framing is relatively limited given the complexity of pesticide occupational risk prevention systems. In addition to the manufacturers, numerous other actors are involved in the chain through which information relating to the dangers of pesticides and to means of protection should reach the end users of these products; as such, they might be considered to have some responsibility for the deficiencies in the information provided. This is particularly true of the government: theoretically speaking, product labelling meets the regulatory requirements for the marketing authorisations granted by the ministry of agriculture, based on a risk assessment carried out by an independent agency, Anses (French national agency for food, environmental and occupational health safety²⁷). However, these requirements have for a long time proven to be extremely limited in terms of health and safety at work. Until 2006 for example, labels contained

²⁶ In the majority of cases the funds do not exercise their right of recourse against the perpetrators of the offences as part of a subrogatory action: the latter might be unknown or insolvent, such action is costly and the funds' supervisory boards often have close links with the perpetrators — government, insurance companies, insured persons (Neyret, 2008).

²⁷ Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail. The new French framework law on the future of agriculture, under discussion in the French Parliament, is considering a complete transfer of the marketing authorisation process to Anses.

no details on “re-entry intervals”, i.e. the period to be respected before farmworkers could return to fields where pesticides had been used. This is also the case for private actors who distribute the products — purchasing cooperatives in particular: farmworkers may only purchase pesticides from certified distributors. However, the latter receive little training in industrial hygiene; they focus their recommendations on the agronomic aspects (occasionally on environmental factors) and virtually ignore the work safety issue. In 2009, a report by the general labour directorate (*Direction générale du travail*) pointed out the “lack of training” for these actors, and, more specifically for most of those concerned, their “total ignorance of carcinogenic risks, mutagenic risks and toxic risks to reproduction”²⁸.

For the time being, the legal avenues pursued by pesticide victims and their lawyer leave aside the responsibilities of these actors who, downstream from the manufacturers, have helped to construct the information received by farmworkers using the pesticides. However, this state of affairs may evolve. The multiplicity of responsibilities in play in the poisoning of farmworkers exposed to pesticides is an issue which is the object of individual reflection and collective discussion within the Phyto-Victims Association. Their lawyer has suggested that claiming government liability might constitute an interesting legal option. In the asbestos case, the law firm has claimed government responsibility in its criminal complaint. Regarding pesticides, the lawyer has already initiated proceedings in partnership with *Génération Futures*, to denounce the incoherencies between the marketing authorisations that the ministry of agriculture has granted for phytosanitary products and the risk assessments made by Anses²⁹. The lawyer’s determination to pursue the claim of government responsibility might explain why he recently suggested that the Phyto-Victims Association modify its statutes, as described in the introduction to this article. However, this orientation, which involves direct confrontation with State institutions — the ministry of agriculture in particular — from whom the association is at the same time hoping to obtain recognition and support, is likely to be more complicated than engaging in confrontation with the manufacturers³⁰.

Finally, it should be noted that as long as legal action focuses on misleading or inadequate information to pesticide end-users, it ultimately reinforces the idea that farmworkers who are properly informed of the dangers of pesticides should be able to effectively protect themselves. In so doing, it runs the risk of implicitly validating a highly questionable orientation of public policies. Regarding pesticide-related occupational diseases, prevention policies make product labelling and the observance of safety instructions the cornerstone of protection for farmworkers. Several recent works have nevertheless suggested that such “controlled use” (*Décosse, 2013*), based on information relating to the dangers of pesticides and to protective equipment, is pure fiction. In particular, ergonomics and metrology studies demonstrate that the protective equipment recommended on product labels is neither effective (*Grillet et al., 2004; Garrigou et al., 2008*), nor suited to the practical realities of agricultural work (*Mohammed-Brahim and Garrigou, 2009*). These data suggest that even if available information on the dangers of pesticides was improved, and

²⁸ *Direction générale du travail*, *Conditions de travail*, 2009 report, pp. 221-229.

²⁹ On 23 April 2013, the *Génération Futures* association and *Teissonnière* law firm filed an administrative complaint in relation to culpable failure by the government, aiming to denounce the fact the French ministry of agriculture had granted marketing authorisations for several products, even though their toxicity for users was known to and had been reported by Anses.

³⁰ The Phyto-Victims Association is in its early stages and is looking for support from regional and national institutions. In 2014, for example, it received a subsidy from the ministry of agriculture which allowed it to consolidate its action but which might put it into an uncomfortable situation when it comes to reviewing public policies.

even if the available means of protection were optimised, truly effective protection would remain highly theoretical. In making lack of information the main option for examining the responsibilities at play in occupational diseases, legal action tends to push aside such reflexion. Paradoxically, it therefore constitutes an element which tends to reinforce the *status quo* surrounding modalities of pesticide control.

3. Conclusion

Whatever the level of analysis, the effects of the law on the mobilisation of Phyto-victims would appear to be multiple and ambiguous. When one focuses on the individual trajectories of farmworkers trying to gain administrative recognition from the relevant authorities for the occupational nature of their diseases, the law would appear to be a resource of low value. Work accident and occupational disease legislation is currently crammed full of obstacles preventing recognition of farmers suffering from pesticide-related diseases. Even when it does grant the status of occupational disease for pathologies that are potentially pesticide-related — often after a lengthy and difficult trajectory — this branch of the law only does the strict minimum, and brushes aside the question of the responsibilities at stake in cases of poisoning. Yet these obstacles are also powerful levers of mobilisation for pesticide victims. First of all, the feeling of arbitrariness and injustice that these obstacles inspire in farmworkers facilitates their embracement of a victim identity — something that they had initially been very reluctant to accept. Secondly, the difficulties they experience in surmounting these obstacles causes farmworkers and/or their families to set out on a quest for information and contacts which lays the groundwork for collective mobilisation.

From a collective standpoint, when we look at how farmworkers have created a movement for pesticide victims, the law once again comes across as an ambiguous resource. On the one hand it has encouraged farmworkers to complete the process of adherence to their status as victims. The legal strategy developed in interaction with their lawyer had the effect of *opening the eyes* of the members of the Phyto-victims association to the responsibilities at stake in their poisoning. Victimary engagement has been produced by legal action, rather than preceding it. Yet on the other hand, the result of the judicialisation of the Phyto-victims' cause was to mould it into legal frameworks, even though this watered down the critical discourse it conveyed. By focusing the attention of victims and their public on the responsibility of the manufacturers, it has pushed into the background other potential defendants located at various points along the chain leading from the manufacture of the pesticides to the farmworkers' exposure. This focalisation tends to legitimize the fiction of a possible controlled use of pesticides, a fiction which assimilates pesticide-related occupational poisoning to events which can be avoided by giving users the proper training and information. In this way it obliterates politically embarrassing questions on whether it is in fact possible for the farmworkers concerned to avoid poisoning even when they have been given all available information on the dangers of the pesticides and on ways to protect themselves.

Following other works on social movements (McCann, 1994), our study shows some of the social effects of legal action, above and beyond judicial arenas. We show that the law is a resource allowing social movements to explore and stabilise chains of causality and responsibility between dangerous products and their consequences on health; but we also show that the law is a constraint, limiting this exploration of causalities and liabilities. This observation leads us to question the singular position of the Phyto-victims movement in the space of workers' mobilisations against occupational poisoning. Most of the mobilisations that have been studied involve employed workers, not self-employed workers or entrepreneurs. In France, legal means and recent jurisprudential

evolutions offer these employed workers the resources with which to examine the responsibility of their employers. These resources are absent in the case of farmers who suffer from pesticide-related diseases; the law considers them to be self-employed, and hence responsible for their own working conditions and for those of any people they might employ. In their search for alternative legal resources which might allow them to be legitimately viewed as victims of their working conditions, they have to work closely with legal professionals. Together, they try to play with existing legal rules and explore how they might be used in relation to the particularities of their own situations. It is difficult to predict the extent to which this exploration will affect victimary social movements in general, and our work calls for more in-depth research on the learning dynamics that these legal developments are opening up.

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