

# Protecting Superstition

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Intellectual property is often seen as a major problem for the developing world.

**A**IDS drugs patents held by Western pharmaceutical companies are criticized for preventing cheap access. Intellectual property rights in agriculture, especially over genetically modified plants, are seen as a barrier to food security for poor farmers in the developing world.

Anti-globalization activists have targeted the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as the most sinister wing of World Trade Organisation (WTO) negotiations.

Many argue that the inequalities of the intellectual property system could be rectified by giving 'traditional' or 'indigenous' knowledge more protection. But these proposals can result in a romanticization of rural poverty and the blocking of economic and scientific development—and as such, are potentially more damaging for the developing world than the expansion of intellectual property itself.

Critics often claim that traditional knowledge is being stolen through 'biopiracy'—for example, when Western companies patent uses of plants that are well known to indigenous peoples. The critics support the Convention on Biological Diversity (CBD) against the WTO's TRIPS. According to the Third World Network (TWN) 'one of the main objectives of establishing the CBD was to counter the possibility of misappropriation or "biopiracy", while one of the effects of TRIPS has been to enable the practice of such misappropriation'.<sup>1</sup>

There are certainly problems with the current intellectual property regime. But these are about the fact that intellectual property may prevent developing countries' access to the most

modern and up-to-date solutions, rather than its failure to protect 'traditional practices'.

The UK government recently commissioned a report called 'Integrating Intellectual Property Rights and Development Policy', which pointed out that there is a tendency for patents today to be filed and granted more widely than in the past. This leads to the possibility of gridlock in developing countries, as permission from many overlapping patent holders will be needed to make even incremental advances.<sup>2</sup>

And the Intellectual Property Rights Commission notes that there is a conflict of interest between the developed and developing worlds. Since most intellectual property is held by the developed world, it makes little sense for the developing world to implement tighter intellectual property laws. On the other hand, a modern capitalist economy requires protection for intellectual property. So, any country that wants to develop needs to find a difficult balance.

The debate about intellectual property is blurred by hype about the 'knowledge economy', which accords intellectual property a more central economic role than it deserves. It is often forgotten that intellectual property is only an idea that can be applied in economic production, rather than economic production itself (businesses that assumed that DNA patents would be goldmines are now realizing this).

## **TRADITIONAL KNOWLEDGE HAS NO VALUE TO SCIENCE OUTSIDE OF ANTHROPOLOGY**

There is also a fetishization of traditional knowledge on part of intellectual property's critics. On this basis, it might be claimed, for example, that

the British Empire was built on the 'biopiracy' of scientists such as Sir Joseph Banks (1743-1820), who travelled with Captain Cook and founded the Royal Botanic Gardens at Kew; Robert Fortune (1812-80), who introduced varieties of tea from China into India; and Sir Joseph Dalton Hooker (1817-1911), who supervised the export of rubber trees from Brazil to Ceylon, Singapore and Malaya.

But the wealth that flowed back to Britain was not somehow stolen from the various peoples around the world who first cultivated or knew of the crops. It was a product of a worldwide division of labour that mobilized millions of people on plantations and farms.

Nicolas Gorjestani, the Africa region's chief knowledge officer at the World Bank, makes a similar mistake when talking about the indigenous knowledge of today. For Gorjestani, indigenous knowledge 'is a key element of the social capital of the poor and constitutes their main asset in their efforts to gain control of their own lives'. He argues that new forms of intellectual property protection are needed, because the 'normal criteria for patenting a process do not exist with IK [indigenous knowledge]'.<sup>3</sup>

But in reality, traditional knowledge has no value to science outside of anthropology—because it essentially consists of what might be otherwise called old wives' tales. On its own terms, traditional knowledge has even less value to industry, and is incapable of forming a basis for development. In practice, therefore, the promotion of 'traditional knowledge' puts up a barrier for the developing world.

One example of how this can happen is the law of Prior Informed Consent. This law, which is incorporated

into treaties such as the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources, holds that before a product based on plant (or other) genetic material from the developing world is commercialized, or even researched, consent is required not only from the government but also from any indigenous people who have traditionally used those plants or live in the area.

Furthermore, traditional users are given a veto over whether development goes ahead. They can either stop developments that are judged to be destructive of traditional ways of life, or—perhaps more positively—can get a share of the wealth generated from their natural resources or traditional knowledge.

This is very different from the forms of intellectual property developed by industrialized countries. The idea behind a patent is that there is a trade-off: there is a temporary restriction on the commercial development of technology, but in order to get a patent you must teach the world something new. To get a patent on an invention you must openly publish how your invention works, and how it may be used.

The idea is that the patent system will encourage a free flow of knowledge that contributes more to innovation in the long run than temporary monopolies will hold it back. In practice, of course, things can be less rosy. But that, at least, is the ideal.

In the case of Prior Informed Consent, by contrast, the monopoly granted is not temporary, but permanent. Rather than aiming to teach the world something new, it is designed to conserve traditions that are passed down from generation to generation. It therefore acts as a block on knowledge rather than an encouragement to innovation.

## SCIENTIFIC WORK IS BEING DELAYED

Under the patent system, a temporary monopoly is granted to private interests in order that we all share in the longer run. Giving indigenous people

a veto over the use of biodiversity, meanwhile, fixes knowledge as the property of one particular group, and ties people to their traditional roles.

The protection of traditional knowledge is obstructing the advance of scientific knowledge that is essential for progress in both the developing and the developed world. Furthermore, the elevation of traditional knowledge encourages a suspicion of science and the motivation of scientists.

For example, Dr Ricardo Callejas, professor at the University of Antioquia, Colombia, has worked on the taxonomy of the 2000 species in the black pepper family, research that promoters of biodiversity might be ex-

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pected to support. Yet Dr Callejas and his students have been accused of 'biopiracy', and faced restrictions on their work. 'If you request a permit', he told the New York Times, 'you have to provide coordinates for all the sites to be visited and have to have approval from all the communities that live in those areas. Otherwise, go back to your home and watch on Discovery Channel the exciting program on Dinosaurs from Argentina'.<sup>4</sup>

Scientific work is being delayed or blocked, and scientists are becoming demoralized. 'I have trouble convincing my closest friends that what I do is because of passion, curiosity, a desire to know more about a group of organisms', says Dr Callejas.

All in all, moves to protect 'traditional knowledge' are a disaster for development. Their logical conclusion can be seen in projects such as the Tanga AIDS Working Group (TAWG) in Tanzania, which provides support for people with HIV/AIDS through local community networks. This has been promoted as a flagship project, funded by the World Bank, OXFAM and USAID, for its work integrating 'traditional healers' with modern medicine. Instead of modern AIDS drugs, patients are treated with 'traditional' plant remedies.

The real problem is, of course, that AIDS drugs are too expensive. But instead of confronting this problem, resources have gone into ensuring that traditional healers are treated on a par with medical professionals. One article on TAWG concludes that perhaps modern drugs are not worth having after all: 'expensive new therapies, by the way, often lose their knockout punch over time. Hence, treating patients with traditional medicines has as much validity now as it did thousands of years ago.'<sup>5</sup>

Seeing virtue in useless herbs used by desperate people with no alternative is a sad conclusion for a campaign that should be demanding the best for Africa.

## NOTES

- 1 Intellectual property rights, TRIPS Agreement and the CBD.
- 2 Integrating Intellectual Property Rights and Development, Commission on Intellectual Property Rights.
- 3 See 'Indigenous knowledge for development', by Nicolas Gorjestani.
- 4 'Biologists Sought a Treaty; Now They Fault It', Andrew C Revkin, New York Times, 7 May 2002.
- 5 'The Ancient and Modern Worlds Unite to Fight HIV/AIDS in Tanga, Tanzania', David Scheinman, Science in Africa, September 2002.

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