(RE)CONTEXTUALISING

THE ROLE OF

INTELLECTUAL PROPERTY POLICY

FOR CARIBBEAN DEVELOPMENT

Bryan Khan, Bsc, MSc, LLM

University of Hamburg (DE)
Property: rights of ownership
Market exchange is based on disposition and property transfer
The ideological debate of the 20th century: ‘Capitalism’ vs ‘Socialism’
Property and Economic Development

- Property as a necessary ingredient for efficient markets

- The quest for a development paradigm
  - From ‘finance’ to ‘the role of institutions’

- Economic institutions and property rights:
  - Political stability: safety from expropriation
  - Judicial independence: preservation of private contracts
  - Legal Certainty: enforcement of private property rights

- Modern Development Discourse
  - Knowledge Transfer and Capacity Building
  - Technological Innovation
  - Potential of Creative Industries
Intellectual Property Rights
A Balancing Act

- Monopoly power is bad for society
- Innovation is good for society

- How to treat with property rights in intangible goods?
  - Information | Technology | Knowledge | Culture

- Sacrifice static efficiency for dynamic efficiency
  - Monopoly deadweight loss (static) vs innovation (dynamic)
  - Intellectual Property Rights: access vs incentives
Key Premise

- Neoliberal approach to Economic Development
  - Expansion of IPRs
  - Both at multilateral (WTO) and bilateral (FTAs) levels

The assumption that private property rights are necessarily good for economic development, has extended to intellectual property (IP) rights, (intangible goods).

*This discussion attempts to challenge this assumption.*
Intellectual Property Policy

- Goal: to provide a temporary monopoly right (sacrifice static inefficiency) in order to incentivise innovation, invention and creation (promote dynamic efficiency).

- Remember: intellectual goods are produced at zero marginal cost, meaning that it is always efficient for someone to consume them (consumption creates welfare).

- Understated Issue: more incentives for producers (welfare creating), means less freedom for users (welfare destroying)

- Core Issue: where to draw the line/how to construct this trade-off?

- The specific issues are endless!
  - Access to medicine
  - Importation of technology
  - Agriculture and food security
  - Bio-piracy and Traditional Knowledge
  - Use of brand-names
  - Public Health Management
  - Free expression and copyright
  - Piracy as a cultural redistribution
Selected Issue: Access to Medicine

- Issue: Access to Medicines and Public Health

- Context: CARICOM States do not have productive capacity for medicines, and are importers of pharmaceutical goods (both patented and generic), medical technologies, and medical innovations.

- Policy Dimensions: Parallel Imports, Compulsory Licencing, and Protectable subject matter

- Specific Issues:
  - Pharmaceutical Prices
  - Topical Diseases: (e.g. Malaria)
  - Innovative Surgical Techniques
  - Genetic Research (e.g. BRCA-1/2)
Conclusion

- Policy discussion on the role of IP in Economic Development remains largely rhetorical.
- More nuance is needed to debate the interrelationships between different forms of rights, and their impacts on specific sectors.

- Always frame the issue as a sacrifice of some allocative efficiency today (static) for more innovation tomorrow (dynamic).

- The principle that ‘strong protection of property rights’ is a key institutional factor for successful development is correct.
- This principle should however not be assumed to unquestionably apply to intangible goods.
Danke schön!
(Thank You!)

Feel free to contact me if you are interested in this topic, or generally in the field of ‘Economic Analysis of Law’.

bryan.khan@edle-phd.eu