Patent Law-Making in Context and the Value of Socio-Legal Approaches to Studying Intellectual Property in Global South Countries

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The past four decades have featured growing interdisciplinary scholarship on intellectual property in non-Western societies. Many of these accounts examine how the structure and implementation of the international intellectual property regime disadvantages developing countries through costly restrictions that hamper local industrialization. Few perspectives have, however, systematically assessed emergent regional variations to complicate a corpus of work that predominantly discusses the extractive dynamics of colonial and neocolonial legacies with little insight on how oppressed countries can strategically navigate the international legal system to suit their development needs.

Patent Games in the Global South: Pharmaceutical Patent Law-Making in Brazil, India, and Nigeria is thus a timely contribution in which the author, Amaka Vanni, uses the fine-grained affordances of historical and ethnographic research to rigorously tease out crucial nuances that explain the differing legal trajectories in three different countries. In employing this data accumulation method, Vanni promotes regional cross-fertilization of successful law-making and reformist practices that have enabled increasing pharmaceutical innovations in India and Brazil, and the institutional challenges and mistakes that have yielded comparatively lower levels of success in Nigeria. Theoretically, Vanni applies TWAIL and nodal governance analysis to showcase the complex and multilayered geopolitical factors that have constrained the rate of innovation and local adoption of intellectual property as a mechanism for protecting inventiveness.

According to Vanni, the relative success of India and Brazil can be attributed to contemporary political, legislative, and juridical efforts to reconfigure inherited patent regimes that were constructed during the colonial era to facilitate extraction. These deliberate interventions to combat the monopolistic patent practices of foreign pharmaceutical corporations and incentivize local industrial production successfully led to notable increases in the market share of domestic pharmaceutical companies. In contrast, the Nigerian government has been much less proactive with using legal reform to protect and facilitate local industry. While foreign pharmaceutical companies have been operating in Nigeria with limited barriers since the 1940s, these activities have ostensibly failed to yield desired levels of technology transfer to foster locally driven manufacture. However, it is important to note here that this slow adoption of the Western model of pharmaceutical manufacture does not necessarily equal an absence of robust innovative indigenous medicinal production. Rather, the underresourced and poorly integrated domestic patent system Vanni describes is likely the culprit in failing to properly track and engage local producer networks.

By highlighting the governance practices that enabled India and Brazil to circumvent and minimize the oppressive TRIPS regime, Vanni offers a critical perspective with key implications for scholarly work on the politics of intellectual property in marginalized contexts. Her emphasis on local approaches to law-making is certainly instructive for the interdisciplinary

literature on intellectual property that tends to focus on foreign appropriation of traditional knowledge and illegal efforts such as piracy and counterfeit production to subvert the international regime. The dominance of such narratives obfuscates the rapidly evolving domestic legal systems and rising levels of modern innovations in developing countries. Vanni's powerful corrective establishes as a necessity, future assessments of how law-making in Global South countries has also emerged as an effective resistance strategy in an unfavorable global legal order. Her work thus underscores the importance of using socio-legal research methods to assess local intellectual property regimes.

Vanni's focus on local patent law-making and juridical practices in India and Brazil showcased compelling nuances that advance TWAILian conversations, but this approach was less successful in her assessment of Nigeria. Here, anthropological and STS approaches could have enabled fruitful engagement with indigenous medicinal producers and extralegal norms that shape the circulation of their knowledges and innovations. The lack of locally founded pharmaceutical factories does not equate to the absence of indigenous medicinal innovations. Ethnographic research on the scientific activities of local herbalists that produce and sell large quantities of medicinal products and how their socio-material circumstances prevent them from industrializing would inform policies the Nigerian government could adopt to increase manufacturing and patent registrations. Alabukun powder is an example of such indigenous already mass produced "herbalist" drugs that might be overlooked as a medicinal innovation appropriate for IP protection.

Research and Development (R&D) institutions are certainly important drivers of technological innovation and local industrialization but a growing body of interdisciplinary literature on science and technology cultures in the low infrastructural environments of African countries underscore the necessity of reimagining the metrics and modalities of innovation (Mavhunga 2017). Some of these accounts describe the activities of technological actors in Africa that did not receive formal education but are producing innovations outside of conventional "scientific" settings. For example, anthropologist Omolade Adunbi (2020; 2017) recently described the artisanal oil-refineries constructed by low-income uneducated youth in the Niger Delta region. His account does not explore how the scientific knowledge for constructing these refineries might

have been protected by certain individuals or circulated within local communities. Further, while unlikely in this scenario, such indigenous scientific artifacts might qualify for patent protection and should be examined by legal scholars. Contributions such as Vanni's that are attentive to local legal processes and the sociohistorical factors contributing to regulatory challenges are thus well-positioned to enrich emergent conversations about the dynamics of scientific innovation in contemporary Africa.

Specifically, increased patent law-making, patent registration, and pharmaceutical industrialization in Nigeria might require creative engagement with subaltern populations such as local herbalists that create products that could qualify for patent protection even though they operate outside of research institutions or the prototypical "laboratory" or "factory." This decentralized perspective is supported by Abena Dove Osseo-Asare (2014) a historian of medicine who recently describes the drugs developed by African herbalists in Ghana, Madagascar, and South Africa that were later appropriated by foreign pharmaceutical companies and mass produced in their factories. Decentering R&D, laboratories, and factories in analyses of pharmaceutical innovation, and existing case law and legal regulations in assessments of patent systems should not be misinterpreted as an assault on these conventional metrics. Rather such a theoretical, research, and policy reorientation could enable efficient absorption of often missed scientific artifacts and practices into the inaccurate innovation records and underutilized patent system in Nigeria and countries facing similar developmental challenges. Importantly, documenting these trends could shape government initiatives and policies aimed at accelerating local industrialization.

The regional idiosyncrasies Vanni elucidates in her account of patent law-making in three Global South countries illustrate the increasing importance of utilizing multidisciplinary outlooks and analytics in global studies of intellectual property. Future research will thus require creative application of interdisciplinary methods (historical, ethnographic) and theoretical frameworks (law, history, anthropology, political theory, STS) that respond to the unique socio-material circumstances shaping scientific innovations and legal processes in the local context under study.

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