

Attack of the bio-pirates

India's neem tree offers a striking example of biopiracy in action and highlights how marauding multinational corporations seek to plunder the knowledge of the global South. Here **Jon Mendel** argues there are many echoes of colonial brutality in today's economic empire building

NEW WAVES OF colonialism are being created and legitimised through the instruments of globalisation and international law. The World Trade Organisation's agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is one of the weapons of choice for conquering territories.

As the writer and activist Vandana Shiva observes in *Protect or Plunder*, "Terra Nullus [nobody's land] has its contemporary equivalent in 'Bio-Nullus' [nobody's life]".

Having been forced to recognise the land belonging to indigenous peoples is not void – it is not nobody's land – albeit after most of it has been appropriated, the global North is now seeking to claim intellectual property rights (IPRs) over the knowledge of the South.

For Shiva, "colonisation today is based on wars over intellectual territory". This neo-colonialism is driven more by powerful multinational corporations than by the mercantile policies of states. Nowadays, as Kevin Watkins of Oxfam observes, rich states are using their control over the International Monetary Fund and World Bank loan conditions to "frogmarch poor countries" towards greater 'liberalisation'.

'Biopiracy' is a central concept in the critique of this neo-colonialism. As noted in *Land&Liberty* (Summer 2002), Shiva defines biopiracy as "the use of intellectual property systems to legitimise the exclusive ownership and control over biological resources and biological products and processes that have been used over centuries in non-industrialised cultures."

IPRs are being used to legitimise the appropriation of common and community resources.

As Shiva argues, letters of patent were originally granted to individuals and corporations so they could exploit a particular territory – playing an important role in colonialism. In *Captive State*, George Monbiot uses the history of the East India Company to demonstrate the power that legal constructions like patents and incorporation allowed companies to wield.

As part of its colonial project Britain once attempted to address its trade deficit through forcing exports of opium on China. This was a powerful tactic: expand exports through selling something consumers will want more of, but which has little value in itself. The Opium Wars (1840-42 and 1856) were essentially fought to open the Chinese market to those products.

The illegal drugs trade no longer offers Northern nations a means of addressing their trade deficits. However, as Shiva notes, those trade deficits (and especially those of the United States) could be substantially reduced if US-style trade law was globalised. IPRs – bits of paper with virtually zero intrinsic value – are used as opium was to give poor nations something they will buy; something that, in the case of medicines and seeds, they must buy in order to survive. Using IPRs, corporations can steal the knowledge of a people and then sell it back to them.

India's neem tree offers an example of this biopiracy in action. The tree has widely recognised medicinal and agricultural properties – used to treat a huge variety of illnesses and ailments for centuries. The neem's curative powers have long been respected in India's culture and traditions, which seek to sustain the knowledge of its importance and use for future generations. By selling medicines developed from patents

of neem back to the Indian people, the companies involved are charging them for the use of their own knowledge.

Neem trees are obviously not a human invention, but are natural and community resources. Their genetic code evolved with minimal human intervention, and certainly without human design. Neem trees are still present in India, thanks in part to cultural norms encouraging the growth and protection of these trees. Had the Indian people not unlocked the value of neem, there would be nothing worth patenting; and as the Neem Foundation notes, "there is now a global trend towards the use of alternative, ecologically beneficial agricultural and health agents".

Liberals have often sought to justify the abuse of non-Western others. Even John Stuart Mill, despite his fabulously stringent defence of the rights of those living in 'civilised societies', believed that 'rude peoples' should sometimes be enslaved. Similarly, modern neo-liberals seek to justify the abuse of the rights of non-Western 'others' through the appropriation of resources such as neem.

Corporations now working in the former colonies are allowed, as they were in the past, to get away with much more than they could in the developed world. ActionAid's attempt to patent the use of salt on chips in the UK was greeted with considerable amusement. However, RiceTec's attempts to patent certain 'Basmati-style' strains of rice as novel inventions were, amazingly, taken seriously – and they still hold three US patents on rice with these 'Basmati-like'





Those who seek to patent neem are appropriating the exclusive benefits from using common property without paying for it

What's in a neem: a lot worth raiding and patenting it seems

properties. Though the international Neem Patent Challenge has successfully argued for patents on the neem's fungicidal and pesticidal properties to be revoked, at the time of writing there are still more than 80 patents on other properties of the tree.

Looking at this through the ideas of international relations expert Dr Jenny Edkins in her essay *Poststructuralism and International Relations*, one can see postcolonial politics working to determine what is 'decisionable' and therefore a fit topic for legal argument (such as the patenting of resources like Basmati rice or neem), and what is considered 'undecisionable' and obviously absurd (such as ActionAid's attempts to patent the Western custom of eating salted chips). It is only attempts to appropriate the poor countries' communal resources such as neem that are considered to be decisionable.

The patenting of the natural resources of the global South is not an abstract problem of justice – it ensures that these poor countries cannot profit fully from the tremendous value of natural and community resources like neem. The North's appropriation of the rights to the exclusive use of these resources will help maintain the iniquitous power-relations inherent in the international economy, and in instruments of the global trade regime such as the TRIPS agreement, thus keeping heavily indebted countries down.

As the feminist thinker Elizabeth Grosz argued in *Nietzsche and the Stomach for Knowledge*, contracts are ultimately founded, and debts ultimately secured, upon bodily collateral. The North seeks to access this collateral in order to claim payment of the (often unpayable) debts of heavily indebted developing states. Such states need to earn international currency to repay their debts, which they do in many different ways.

With this in mind, the Thai government has tried to legitimise the sex trade. For example, in the 1966 Entertainments Act they sought to regulate brothels, serving to encourage sex-tourism as a source of foreign exchange. The sex-work undertaken in Thailand is often extreme. The development theorist Sinith Sittirak describes one woman whose act involves inserting razor blades into her vagina. Such acts will mark the bodies of those conducting them. In Michel Foucaultian terms, the 'crime' of an unpayable debt, a debt enforced and maintained using IPRs, is marked onto the bodies of the most vulnerable persons in a community. Bodily collateral is accessed. Discipline is maintained. The results of the theft of the natural resources of the South through IPRs can now be seen cut onto and into bodies. Sometimes with razor blades.

We are now seeing a peculiar double-move where, on the one hand, indigenous knowledge is recognised as being sufficiently valuable to be worth plundering and, on the other hand, in order for corporations to plunder this knowledge 'efficiently' they must present it as null. The worth of this knowledge must be denied in order to legitimate the appropriation of its value.

In Derrida's terms, what allows biopiracy is therefore what must be denied during its

legitimation. Neem should not be patented – no individual or organisation created or unlocked its entire value. Those who seek to patent it are appropriating the exclusive benefits from using common property without paying for the privilege: this is biopiracy.

The liberal 'individual' whose rights to IPRs are defended is in fact a Western construction of the individual. It is possible to construct liberal 'rights' for this individual only through the abuse of non-Western 'others'.

As the feminist activist and writer Catherine MacKinnon has argued, liberals see the abuse of certain individuals as a right of this complete liberal individual. We must reject the 'free' trade that neo-liberals defend, and ask how a fair system of IPRs can be achieved.

One could give communities who have unlocked the value of resources such as neem full ownership of the IPRs on these resources. However, this shows insufficient respect to the generations who worked within a paradigm of common ownership to unlock the value of neem. Though it would grant them equality with patenting corporations, this equality is, to echo philosopher Keith Ansell-Pearson's reading of Nietzsche, merely equality under the law of the colonisers. A genuinely equitable solution to the ownership of natural resources such as neem must not simply impose 'alien' ideas of equality.

One option is to insist on the strict common ownership of natural resources. This in turn creates an issue of how innovation can be encouraged in the uses of these resources. For example, someone might find a truly novel way of processing ►



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neem leaves, with a novel use for the product.

The person or company developing this should then have the right to claim certain benefits from it, after they acknowledged the role of communities in unlocking neem's value. As Shiva observes, "the challenge is to strike a balance – enough protection to encourage innovation, but not so much that the social good is not served". Strict common ownership would not provide sufficient protection for individual innovation.

There are many complex issues involved in the patenting of biological resources. We must keep our account of the neem debate well-grounded in history in order to see how TRIPs and IPRs are being used in new waves of colonisation, and keep our theorising grounded in reality, or the superficial appeal of IPRs will blind us to the many persons whose rights are being

abused.

With private and unlicensed common ownership of natural and community resources both inadequate solutions, we need an alternative that combines the advantages of both. Resource rentals fulfil this requirement. The states and communities that have unlocked the value of natural resources have a right to charge rent to those who use those resources. The users of those resources should pay for the value they take from states and communities. This would keep these resources in a state close to common ownership and show due respect to alternative methods of property ownership: while those wishing to use natural resources would only need to pay the

rental for the resources themselves, and would therefore be free to profit from any innovations. As well as being justifiable in abstract, ethical terms, this is also a pragmatic solution to the neem debate: it would help to generate income for poor countries and redress the balance of world trade.

Soon the international order must change. We must hasten the collapse of those aspects of international law that maintain IPRs and contribute to the chronic indebtedness of the world's most impoverished countries. We must ensure that their replacements are truly equitable, so trade can become genuinely free and fair – maintaining the freedom of all involved, not just of the colonisers. **L&L**



Jon Mendel is studying for an MA in Politics Research at the University of Newcastle upon Tyne
